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**SPEECHES**

ON THE

**J E W B I L L ,**

IN THE

**HOUSE OF DELEGATES OF MARYLAND,**

BY H. M. BRACKENRIDGE, COL. W. G. D. WORTHINGTON,  
AND JOHN S. TYSON, Esquire.

TOGETHER WITH

AN ARGUMENT ON THE CHANCERY POWERS,

AND

AN EULOGY

ON

**THOMAS JEFFERSON AND JOHN ADAMS, &c.**

BY H. M. BRACKENRIDGE



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## ADVERTISEMENT.

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THIS publication was at first intended merely to preserve in a less fugitive form, the speeches on the JEW BILL, in Maryland, together with the argument on the CHANCERY POWERS; but the editor, having been furnished with the Eulogy on THOMAS JEFFERSON and JOHN ADAMS, which has been highly complimented by Mr. WIRT, together with some other articles, by the author, concluded to embrace the whole in the volume, now offered to the public. The struggle in Maryland for the freedom of conscience, is one which at the time excited a deep interest; and every victory of CORRECT PRINCIPLES---every triumph of FREEDOM, should be carefully recorded in *perpetuum rei memoriam*.



# AN ARGUMENT

DELIVERED BY

H. M. BRACKENRIDGE,

BEFORE THE CHANCELLOR OF MARYLAND, 1816,

IN THE

CASE OF M'KEAN *vs.* BRUFF.

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I AM about to address the court on a question of some novelty, and, I think, of some importance. It is one which must be solved by a recurrence to first principles, if solved at all. It is one, which calls for no little research, and, at the same time, opens a wide range of analogous illustration. Trusting to the indulgence of the chancellor, and, with all deference to his superior wisdom, I will venture into a field which ought properly to be reserved for abilities infinitely greater than mine.

To the complainants, the refusal of the chancellor to interpose in their behalf, will be attended with the most serious consequences. They have no hope of obtaining a restitution of their property, which has been seized in Virginia, until the final decision

of a suit now at issue in that state; and this must depend upon their being able to procure the testimony of the respondent. For the purpose of procuring it, a commission, (as is stated in the bill,) has been sent from the court in Virginia to this state. But the respondent to the present bill, conceiving himself under no obligation to testify, because the Virginia court has no power to enforce its commission here, has utterly refused.

Unless, therefore, there be some mode of compelling him to give testimony, the plaintiffs to the suit in Virginia must, eventually, lose their property; for, in the breast of the respondent, *alone*, is deposited the knowledge of the facts essential to the prosecution of their claim.

The chancellor of Virginia, informed of the nature of this refusal, has suspended the suit in that state, indefinitely, in order that time may be allowed us, to procure this testimony. In the meanwhile, however, the property of the plaintiffs, which is of considerable value, is detained from them, and, eventually, they may lose it altogether.

To our clients, then, the question before the chancellor is of much importance. It will, however, be easily seen, that this importance, great as it may be, dwindles into comparative insignificance, when considered in relation to the general effects of this decision. This is one of those cases of which it may be justly said, that the private grievance



is merged in the public inconvenience. There is nothing of more frequent occurrence, than the sending of commissions from one state to another, for the purpose of taking the depositions of witnesses; and, hitherto, no difficulty from a refusal to give evidence, has been experienced. But, may not this, in a great measure, be attributed to the general belief, that it is the *duty*, as well moral, as legal, of the witness, to testify? And, is there not reason to fear, that, when it comes to be generally understood that this rests entirely on the whim, caprice, favour, or, perhaps, corruption of the witness, there will be frequent instances of refusals like the present? At all events, is it expedient, is it just, that a matter of so much importance to the safety and well-being of society, as the testimony of witnesses, should be left altogether to their private will and pleasure, where it is indispensable to the attainment of justice, in cases depending in court? In no well regulated government, is it ever left to the mere option of the witness to give, or to withhold his testimony, where it is essential to the ascertainment of public, or private right.

The different states which compose this confederacy, as respects the intercourse of business, and all the transactions of life, constitute but one great nation. In matters of business, we are not more influenced by state divisions, than by those of counties and parishes. The national compact (for thus

we may denominate our federal constitution) has carefully provided against this inconvenience. It is to the advantage of all, that there should be some mode of procuring the testimony of witnesses residing beyond their respective limits, and yet within the territory of the nation. In this point of view, I am confident, the present question cannot be regarded as unimportant. Our political institutions are yet young and in a course of experiment; this may be the first time the question has been presented to a court. In one thing, I believe, no one will dissent from me; IF THERE BE NO LAW TO SECURE US THAT WHICH WE NOW SEEK, THERE OUGHT TO BE A LAW.

It will therefore be a preliminary inquiry, whether this be such *casus omissus*, in legislation, as requires the enactment of a law, or whether it be a subject proper for the extraordinary interposition of this court. I contend, *that if we have a legal right to the testimony of the witness*, it is competent for this court to provide a remedy, unless restrained by some positive principle of law, from which it would be improper to deviate. If, on the contrary, this be not an original and perfect right, but one which can alone derive its existence and creation from some particular statute, it is, then, *casus omissus*, for which a remedy may be provided in future, but, in the meanwhile, the present complainants, and, perhaps, many others in a simi-

lar situation, must unavoidably suffer. It will be my duty to show, that we claim a right which never required a legislative act to call into existence; that, wherever legislatures have enacted laws, or courts have interfered, it has been to acknowledge, to sanction, to enforce; and, although they have, in some instances, limited the exercise of it, as in the case of all *other natural rights*, or prescribed the conditions upon which it will be enforced, they have always taken for granted its original existence.

In ethics, or morals, those truths which are so obvious as to be almost self-evident, are as difficult to prove, as an axiom in mathematics. I feel at a loss how to demonstrate, that which no one can rationally deny. And, yet, I sincerely believe, that it will be seen, that the chief difficulty lies in this part of my argument: for if it be admitted, that we have a perfect right, it appears to me, that every thing for which I contend, must be admitted as the necessary consequence. Where is the civilized people, and I might ask, where is the barbarous tribe, that has not found it necessary to compel witnesses to give evidence, when their testimony was necessary to the administration of justice? Amongst the Greeks, a witness who refused to give evidence was liable to a penalty of a thousand drachmas; amongst other nations, whom I do not mention as examples for imitation, the bastinado, the knout, or the wheel, are the usual modes of

subduing the stubbornness of witnesses. As in every society disputes will take place, and, as it is impossible, in such instances, to decide between the parties at variance, without having recourse to the information or knowledge of others, respecting the subject of difference, such information becomes as important as the authority of the magistrate who is to decide, or the laws by which his decision is to be governed. The resort to the testimony of witnesses must have been coeval with government, with laws, and with judicial power—nay, with society itself. It is one of those things which may be said to be interwoven with its very texture; and essential, not merely to its well-being, but to its very existence. To “bear witness,” in judicial causes, is one of those duties which we reciprocally owe to one another, and arises from the very nature and structure of society; a duty as perfect as that which every citizen owes to the whole, (in other words, to the state,) for its defence and preservation, as the necessary and inseparable attendant on every social compact. No positive statute, or express law, is necessary to give birth to such a duty, for it was called into life long before the formal enactment of statutes or express laws. It is, in fact, an appendage to the right to life, to liberty and property, for the protection of which, society and laws have been instituted.

It will not be denied that there are certain *na-*

*tural rights*, which, on entering into society, are supposed to be surrendered altogether, modified, or completely retained. So far as they have not been taken away, or modified, we still possess them in as ample a manner as we could in a state of nature. They originate in nature, although possessed and enjoyed in society. For their *security*, others have been surrendered ; but when we claim from the government the security it has stipulated to afford, for those which have been retained, we call upon it to secure what was *originally ours*, not to warrant what we have derived from it. Such, for instance, is the right to pursue the course of life we may think most conducive to our happiness, provided we do not injure others, or contravene the laws. If in the pursuit of this natural, and inherent right, we should be interrupted, or molested, we are not required in seeking a remedy, to produce the laws or statute, by which the right has been created ; it suffices that it was ours on entering society, and that it has not been taken away : it is enough that it is inherent in the very nature of man, and that laws and governments may act upon, but can no more create, than it can create the beings which compose the society itself. Now, as it would be no better than a “solemn mockery,” to acknowledge that we have rights, and, at the same time, deny us the means of protecting them, there are other rights incidental to the first, alike antecedent to express law, and



as independent and original in their nature, as those which we receive from the Creator. Such is the *right* to the *security* of our persons, property, and characters, and the right to appeal to the courts of justice when any of these have been violated. 1 Black. 124. This arises from that tacit social compact, admitted to exist, even in monarchies, where all power is referred to the monarch as its fountain. The necessary consequence of the right to demand redress for injuries, is the right of *compelling witnesses to give testimony*, otherwise, the first might be altogether nugatory. For the protection of rights like these, constitutions may provide, legislatures may enact, courts may institute rules to facilitate their vindication, but neither legislatures nor judges can *make them*. They can but act on what is already in existence. The distinction between natural and social rights, although taken by Blackstone in his commentaries, is of no practical importance, as the phrase *natural rights* includes both. It is true, there are many rights, both social and natural, which impose only imperfect obligations, and some of them of such a nature, as not even to appeal to the conscience; the first are contained in the precepts of morality, such as charity, benevolence, piety, &c.; the others may be included under the general term of decorum, *bien seanse*; for both, it would be utterly impossible for human laws to provide, on account of their infinitely various and

indefinite nature, and are, therefore, left to the coercion of conscience and opinion. But this sanction in cases of perfect right would be entirely inadequate, without others of a more certain and perfect character; the well-being of society, the fitness of things, requires that they should be defended and protected, in a more careful manner. Such are, in general, the cases in which, to use the words of Justinian, *vinculum juris quo necessitate adstringimur alicujis rei solvendæ*; such are, for the most part, those cases, which are said to be *at common law*, and owe their commencement or being to no custom, to no statute, or statute supposed to be lost, to no express law or precedent, but spring from the relations of society; and it is immaterial whether recognised time immemorial, or brought into notice at a later period, by the accidents of place, of business, of habits, or of employments. Among all the individuals that compose the society, there is a tacit agreement to respect them, and it is this which the law will enforce. A mutual obligation arises, not to withhold or interrupt their enjoyment, and, on certain occasions, to assist in their defence. From what other source do we draw the maxim, *sic utere tuo ut alienum non lædas*, and whence we derive the law of private nuisance? Upon what other ground does a man claim damages of his neighbour, who obstructs his ancient rights? Or, who burns his neighbour's house, by negligently keep-

ing the fire in his own, or who drowns his neighbour's lands, by damming up the stream common to both—or who is the cause of injury to his fellow-citizens by keeping mischievous animals? From what other source, do we derive the remedies which relate to the rights of property, reputation, or liberty, arising under the head in the civil law, *de injuria*? These are causes of complaint, founded on the disregard of what tends to the safety, happiness, and well-being of society. No well regulated community can overlook them. There are many of the same nature, which cannot be foreseen, but when they occur, are instantly recognised as belonging to the same class of rights. Such is the right, which the law gives a man, to pass over his neighbour's adjoining land, when the highway, by some accident, has been obstructed.

There is, however, a criterion by which a lawyer may easily distinguish the cases of perfect obligation, from the imperfect. It is, by observing whether they have been uniformly sanctioned by law; in many cases, I will admit, the distinction between what is legal, or only conscientious, is difficult to be made; but we cannot mistake, if we find that this sanction has been actually applied. Cooper's Inst. 560. Let us bring the obligation to testify in a cause depending, to this test, in order to ascertain the class to which it belongs.

We claim the right to the testimony of the re-



spondent, in virtue of no positive law or statute, but as a natural or social right; has this right been in any shape acknowledged by courts or legislatures? It is a sufficient answer, that from the earliest periods in the history of English jurisprudence, witnesses in civil cases, have been compelled to give evidence. But, it is expressly declared by lord Mansfield, that an action for damages, can be maintained at *common law*, against a witness who refuses to give testimony, before and since, the statute of Elizabeth, imposing a penalty, and giving damages, which is nothing more than an additional security. Doug. 556. In another case, an action for damages, *on the statute*, was maintained against a witness, who refused to bring papers into court on a *subpœna duces tecum*, although not within the words of the statute, and, besides, objected to, as a mode of proceeding but recently introduced. 9 East. 473. This case was declared by lord Ellenborough, to have been one of the most important ever tried in Westminster Hall. Indeed, it would be strange, if cases which may involve the most important subjects that can relate to us in this life, were otherwise considered.

From the cases just cited, it is evident, that the power of compelling witnesses to testify, is not a mere incident of judicial authority; that it is not a matter which rests altogether between the judge and the witness, and not between the witness and the

party. Otherwise, how could the party become entitled to damages at common law, if the witness be only guilty of a contempt of court? The right to claim damages, supposes a right to claim the performance of a duty or obligation. I contend, that the plaintiff has a clear, distinct, and perfect right *to the knowledge of certain facts*, in the defendant's possession, and that the defendant is under a corresponding obligation to disclose them. Living under the same laws, in the same society, being entitled to the same right from some one of his fellow-citizens, and having the consciousness that this means of protecting his rights is always at his command, can it be doubted that he has tacitly incurred an obligation, which the laws will compel him to perform? That knowledge, in the breast of the witness, is as much the *property* of the party, when, on a proper occasion, it is required, as a purse of gold placed with him for safe keeping! When legally called upon, it is a duty which the witness is as much bound to perform, as any office of life he may have expressly and positively taken upon him; and it is, for this reason, that he is responsible for the consequences of his neglect. Such has been the recognition of courts of law; let us now see how it has been received in the court of chancery.

The court has also been in the practice of compelling witnesses to testify, long before the enactment of statutes on the subject. But, proceeding

on the principles of *natural justice*, it went much further than the courts of law. These, in consequence of the obstinacy with which they refused, at an early period, to extend their remedies, failed in securing this important right to testimony, as well as many others, in some essential particulars; application was therefore made to the king in person, or to his delegate, the chancellor. There existed no way of compelling a party to give evidence against himself: there was none for perpetuating the testimony of witnesses, or for taking the depositions of such as were infirm, or about to absent themselves: and, upon what ground did the chancellor interpose in these cases? Surely, upon no other, than the broad ground of *natural justice*. The party had an *equitable right to the facts in the possession of the witness*, essential to the determining of his cause. A right as complete, in itself, as the right of trial, or to the subject of the dispute when awarded him. What other reason than this, could have been suggested to the chancellor as the ground of his interposition? Is it then necessary to use further argument, to prove the truth of the simple proposition which I have undertaken to establish; *that a party has a distinct and perfect right to the testimony of his fellow-citizen, when legally required, unless it is withheld on the ground of some sufficient legal excuse?*

It may be said, that the testimony being sought,

for the purpose of being given in evidence, in a cause depending in the court of another state, the court here, will only consider it as a voluntary affidavit. There ought, most certainly, to be a proper restraint, or restriction, in the use of this right, as of every other; or, more properly, it can only be considered perfect, when it is sought, for the purpose of being used in a cause depending in some court, for it is only thus far, that it has received a clear and undoubted sanction. But, I contend, that it is not material *where* that cause may be depending, in what court of legal organization, or *in what country*. This can in no case alter the right and obligation. There is no necessity of entering into an elaborate argument on this head, for I will produce a case exactly in point. A bill of discovery has been entertained by the court of chancery in England, in aid of a court in Spain. Coop. chanc. 150. If the decision in this case, proceeded on principles of *comity*, there is certainly an equal reason for a similar comity between these sister states: if on the principles of natural justice, which is more probable, it goes to confirm my argument in every particular.

I am aware, it may be objected, that I am proving too much; that I am proving my client not to be entirely remediless elsewhere; that he may maintain his action for damages at common law, or perhaps under the act of assembly. To this objection I have an easy reply. To withhold from us

the aid of this court, the remedy by action for damages at common law, must appear certain and definite, not uncertain and conjectural ; and, moreover, that it must be commensurate to the nature of the case ; it is not certain, for this would be the first suit brought to recover damages of a witness, for refusing to give evidence in a cause depending in a foreign court. This case would be regarded as *primæ impressionis*, and, therefore, the presumption would be against it : for where the right is clear, but the remedy has never been applied, the remedy is presumed to have been taken away, or never to have existed. But, in chancery, directly the reverse of this doctrine prevails. It is in these very cases, where the right is clear, but without known remedy at law, that the chancellor will interpose. The reason is the same, where the remedy is imperfect or incomplete ; as in this case, the witness may not be able to make a compensation. Besides, the court of chancery, whenever the party is brought before it in a proper manner, will rather compel him to do the specific act, which he is bound in conscience to perform, and will not accept an equivalent. Coop. ch. 128. 3d. Woodison, 382. It is also the duty of the party demurring, to point out, specifically, the remedy to which the other party may resort ; if it cannot be discovered from the face of the bill, it is not enough to suggest it in argument. It is analogous to the subject of jurisdiction ;



the party is not to be sent to hunt a remedy from one court to another ; it is the duty of the defendant, if he deny our remedy, to show in his demurrer where it may be found. It is not in the power of the defendant to show us this, with certainty ; he does not even offer us a conjecture. On what ground, then, can he oppose our claiming it here ? Does he deny that we have a right to the testimony ? no—but *that we have a right to compel the defendant to give it.*

It seems to me, that the position which I have thus far been endeavouring to establish, with difficulty, because it is almost self-evident, may now be conceded to me ; to wit, *that we have both a legal and equitable right to the testimony of the defendant.* It remains to be considered, whether this court possesses the power of granting a remedy ; for we do not ask the court to make law, to create a right, but to enforce and secure, that which is already established. It is a maxim of law, *that every right has its remedy*, which the student learns as one of the rudiments of the science. There are said to be exceptions to this rule ; but it is the opinion of very able lawyers, that in the cases which have been cited as constituting those exceptions, the right itself is extinct. In the case of *Ashby vs. White*, Raym. 944, it is boldly asserted by lord Holt, that *the English law suffers no right to be without a remedy.* In the case before him, a right

had been created by act of parliament, but without providing a remedy; it was the right to be returned for a public office, and which, when thus created, stands precisely on a footing with a natural right. Lord Holt contended, in opposition to the other judges, that there was a remedy, and his opinion was afterwards confirmed in the house of lords.

In the court of chancery such a question ought never to occur; for it is its peculiar province and duty, to see that no right be lost through defect of law, in providing a remedy. Nay, this defect of law is the very reason of its interposition, and the origin of its jurisdiction, in every case. There can be no question, but that, without the aid of the chancellor, we shall be left without the means of coercing the respondent to give evidence—to disclose facts within his knowledge, which are absolutely essential to a fair decision of the cause depending in Virginia. It is evident that we have no *certainty* of any remedy in the courts of law, by action for damages, and this court will not send us to *make the experiment*, before it will interpose its authority. As to objections of form, or to the manner of our seeking relief, they can be obviated by the chancellor's decree; this may be so shaped as to meet the exigence of the case, whether it be by attaching the witness to testify before the commissioners, or compelling the respondent to make a disclosure of the facts sought in the bill.

I might here rest my case, with perfect confidence of having proved every thing necessary to entitle me to the interposition of the chancellor. The question, however, from its novelty, demands a more full investigation. I will not content myself with merely meeting the objections of the defendant, but will endeavour to ascend to higher ground, whence I may be enabled to overlook the whole of this intricate subject. Regarding this case as new in its circumstances, I will pray the interposition of the chancellor, in virtue of those high superintending powers, with which by the nature of his office he is invested. I will ask him to seek the fountain of justice, from which all law must or ought to flow; to consult expedience, the fitness of things, and to see that no injury be done to the citizen through denial of right.

I am well aware, that I shall be told, that the powers of the chancellor are circumscribed like those of every other judge, and that in administering justice, he differs from others, not in the substance, but in the form. To this I answer that the disposition to restrict the powers of the chancellor, has been carried to an extreme; the period is not so far removed from our times, when his jurisdiction was acknowledged to be much more extensive. How has it come to pass, that this has been confined to strict and narrow bounds? Has it been exactly defined by any positive law, or have the writers and



judges at last agreed to fix their limits? No, his powers are definite, so far only as cases have been formed into precedents, and those precedents into principles; but a field still remains open, as extensive as the endless variety of human transactions, ever assuming new shapes and combinations.

All modern writers on the law of equity, confess the difficulty, if not impossibility of exactly defining the powers of the chancellor. This surely is a circumstance in which this court differs from courts of law. Fonb. 20, Coop. ch. 25—Mitford 1, 1 Bl. 91. It is admitted that there are cases in which he possesses a legal discretion; *quod lex non exacte definit, sed boni viri permittet*, Fonb. 21. But this discretion is attempted to be subjected to definition and reduced to rules, by which it is in fact made to signify nothing. A deplorable obscurity, and even contradiction, is discoverable in all the writers on the jurisdiction of the chancellor. Were I called upon to account for it, I should say that it proceeds from a conviction that cases must arise, for which the law has made no adequate provision, and at the same time, from an unwillingness to confide in the breast of any individual, the necessary discretionary power to provide for them. It is a jealousy of arbitrary discretion—a jealousy to be praised, but unfortunately, in the present instance, in contradiction to practical utility. It is this, which has given rise to a strange and unintelligible distinction.

between *equity in general*, and the system of English equity jurisprudence, by which the chancellor is governed, not guided. "Equity," says Blackstone, (when he means equity in general,) "is the soul and spirit of all law: positive law is construed, and rational law is made by it." 3 Black. 429. He elsewhere adopts the definition of Grotius, (1 Bl. 62.) which is expressed in these words: "the correction of that, which by reason of its generality, is deficient." We are further informed that both courts of law and equity, seek the *spirit of the law*, that they interpret the law with the same freedom, and are guided by the same lights, act precisely on the same principles, in a word, that they are both courts of law, as well as of equity. Then why are we told by the learned author in another part of his work, that England is the only country in the world, in which the moral phenomenon is presented, of these powers being distributed to distinct and separate courts, while, elsewhere, they are both consigned to the same tribunal? Let me ask, what distinct idea is there conveyed to the mind, when, notwithstanding this, we are told that the use of a court of equity is to supply what in the court of law may be defective, and which, on the principles of natural justice, deserves a particular consideration? Fonb. 21. This appears still more singular, when we find it conceded by the learned commentator, that all the more ancient writers agree in considering the power

of the chancellor as purely discretionary! Such was the reason constantly urged by its enemies, on its first appearance. They were unwilling to admit, that that discretion was not necessarily unlimited, but might be sound, honest, and enlightened; that it might be governed by positive law, guided by precedent, or that, where neither positive law nor precedents were to be found, that it might be left free to obey the law written upon the hearts of honest men, governed in the particular case by a refined and enlightened judgment.

Two things occur to my mind which serve conclusively to prove, that in its origin, at least, the power of the chancellor was not tied down or restricted, by arbitrary rules of decision, as in the case of other courts—that it was not circumscribed to narrow and definite limits. The first, is, that the court of chancery, in England, is no court of record. 2 Esp. 473. And why? Because its decisions are not *secundum leges angliz*, but *secundum equum et bonum*; the decisions of the chancellor, forming no precedents of the law, by which his successor is bound. We find, that in the earlier books of chancery reports, the chancellors were in the habit of reversing the opinions of each other, with very little ceremony. 1 Vern. 194. The second, is, that the chancellor has no jurisdiction in criminal matters, because the well-being of society forbids, that *discretionary power* should be con-

ferred to any individual, on subjects so important. 1 Fonb. 23. Such *discretion*, is confided to the hands of the king alone, and has now become the only judicial power, immediately exercised by him; having, in all other cases, delegated that power to his courts of law and equity. 1 Fonb. Black. 1 Harrison 15.

It is not a matter of surprise, that writers should have failed to mark by clear and precise lines, the distinction between law and equity; or the nature, and extent, of equity jurisdiction, whose origin may be traced to times of ignorance and prejudice. I am not to be understood as speaking of the court of equity, in the form which it has at present assumed, after so many struggles. In the progress of my argument, it will be seen, that I mean no disrespect to this court, or to the system as now shaped, to which it resorts for aid, in the decision of particular questions. I am discussing a topic purely elementary, in order to clear the way for the reasoning which I mean to advance. The court of chancery took its rise from the deficiency and poverty of the common law—or rather, was forced into existence, by the narrow-mindedness of the common law judges, who, either from timidity, or ignorant attachment to their half-savage usages, were unwilling to extend them by a liberality of construction, which would enable them to embrace new cases. They were still more unwilling to receive a code already



formed by some more enlightened society ; with barbarian obstinacy, and pride, they haughtily rejected any code of laws adapted to the changes, and improvements, which they were constantly experiencing from their advancement in the social arts. This deficiency soon became insupportable to individuals. They must resort to some means by which it could be remedied. It was natural in a government, in its nature despotic, to apply immediately to the monarch, the fountain of all power in the state. The suitors presented themselves to the king ; the king, occupied in the more important affairs of the chase, of the banquet, or of war, referred them to his chancellor—and the chancellor had recourse to the civil law. Hence the “laboured and connected system,” of the present chancery law, is chiefly indebted for its materials to that admirable code. In time, this younger child grew to be the most admired for its beauty, and accomplishments, while the elder son, and heir, spoiled by indulgence, grew each day more vulgar, and unamiable. Judges more enlightened, and liberal, at length arose, and attempted to free the common law from its barbarous roughness. At first, their well intended efforts, served only to render “confusion worse confounded,”—the potent interference of acts of parliament was required—with their assistance, and the favour of more enlightened times, the common law began at last to emulate the system of equity. I feel my-

self irresistibly urged forward in the pursuit of this subject—although I am conscious of having already trespassed much on the patience of the chancellor.

Who can mark, without a smile, the whimsical inconsistency, and contradiction, into which the greatest minds are betrayed, when acting under the influence of mere prejudice, or when labouring to support a fallacious theory? The enlightened Blackstone relates with exultation, and with true English pride, the manly deportment of the sturdy barons, at the parliament of Merton, who, in abhorrence of the civil law, of which they were totally ignorant, exclaimed *nolumus leges angliae mutare*; while in another part of the same book, he reprobates, in the most contemptuous terms, the conduct of the poor Irish, for their obstinate resistance to the abolition of their Brehone\* law, and to the introduction of the common law. And yet this civil law, so sturdily rejected, has found able panegyrists, and defenders, in many of the greatest modern English writers; in Gibbon, in sir William Jones, and even in the learned commentator himself! Notwithstanding his denunciation, he unintentionally bestows upon it the highest encomiums. He advises the student to study the law *as reduced to a science*, in the code of imperial Rome—to seek it as one of the fountains of English law—it is a foun-

\* Brehone, Brecken, from the glens and ridges of Brecken, or *fern*, where the rude people met to make their laws.

tain from which it has largely drawn. He calls Edward the First, the English Justinian, and acknowledges, that the earlier writers of the common law, Glanville, Brackton, and the author of Fleta, have transcribed freely from the civil law. In fact, if what was thus freely transcribed, were to be subtracted from the old English common law, there would be little left besides the feudal rules of tenures, arising out of a species of petty tyranny, much of which has become obsolete, even in Britain, and which, in this country, is confined to still smaller compass. Without such a transcription, the laws of England would only be adapted to the rudest stage of society. But for the jealous ignorance of the English barons, who feared that their petty tyranny might be controlled by the more powerful despotism of a monarch, and obstinately rejected the Roman code, through ignorance of its character, we should have had no chancery court, or chancery law. At the same time, I own, that it has given rise to a system more consonant to justice, and enlightened reason, than the common law; to a modification of the civil law, better suited to our circumstances, and to the state of civilized life in modern times.

And here, if I may be allowed the digression, I would ask, what was this code which aroused an enmity so violent in the barons, and against which English prejudice was directed for so many centu-

ries, and which even now prevails? Next to divine revelation, it was the most rich, the most various, and comprehensive treasury of precepts, ever collected, and arranged, for the regulation of human actions. No circumstances could have existed more favourable to the formation of a perfect code. Rome had already flourished more than a thousand years—she had long been the mistress of the world—the wealth of nations had been poured into her lap—the Greeks, the most enlightened people that ever lived, had transferred their arts, their knowledge and refinement to the eternal city—she had embraced the Christian religion, the touchstone of moral truth and beauty—almost every social relation which required the aid of laws to define or to protect—every art, commerce, or mode of existence, was known to her experience. At such a time, and in such a country, with such complicated interests to embrace, the immortal code was framed. Yet against this code it was that the sturdy barons directed their furious hate! The writers on law in the time of Justinian, had accumulated to many thousand volumes, they had become even more numerous than the tomes which load the shelves of an English lawyer. The Scaevolas, the Ulpians, the Papinians, like our Cokes, our Bacons, our Blackstones, had laboured to condense and reduce this vast and unwieldy mass to the form of a science. Under Theodosius, there had been an effort to comprehend



the whole in a digest; and although a mighty effort, it was not crowned with success. At length, in the sixth century of the Christian era, one more serious and successful, was made to accomplish this magnificent enterprise. The study of a whole life had been insufficient to attain some acquaintance with a species of learning, so voluminous, immethodical, and complex. But the gathering of ages had brought together a vast magazine of materials. An edifice was raised at last, which bids fair to outlive, as it has surpassed, every other regal monument. The work was confided to Tribonian, and to nineteen others, chosen for their learning from the whole empire. The most ample powers were given to new-model, to abridge, to abrogate, to annul, to enact, according to their best judgments. And did these men at last reach the point of perfection? No—for they were men. Justinian, vain of this noble edifice, and believing that since *the multitude* of human transactions had now their rules, and that no case unprovided for could possibly arise, denounced the penalty of death, on any one who should dare to comment on them, or attempt an interpretation, beyond their letter. But alas! he soon became sensible of his folly. If there be a moral axiom, it is that of Grotius—*that no finite rule can embrace an infinite subject*. It was soon discovered, that without consulting the spirit of the law, or *establishing a court of equity*, invested with the

necessary discretion, cases would occur, for which his boasted code had made no provision. Justinian was, therefore, compelled to repeal his unwise prohibition ; and, but six years afterwards, he found it necessary to publish a new edition with improvements and augmentations. Here is a lesson to those who hold that a code of laws must embrace every possible case—to those *case men*, who dare not trust themselves in a recurrence to the elementary principles of justice, where the law is silent, or where its letter, and not its reason, applies. Have we at last arrived at that state of perfection which the code of Rome could not reach? Permit me to take a rapid glance at the map of our common and chancery law, and we shall then see, whether they can lay claim to this lofty pre-eminence.

Scarcely had Justinian retired from the stage of life, when his works were covered with the dust of oblivion. The corruption, the rottenness, which pervaded every part of the empire—the decline of the Roman power in Asia and Africa, together with the eruption of savage hordes, once more spread the night of barbarism over the fairest climes of Europe. For five centuries the laws of Justinian lay covered in a common grave, with all the refinements of civilized society. But when the morn of science once more dawned on Europe,

“To glad the nations with redoubled ray,”

the immortal code experienced a glorious resurrection. The Pandects brought to light at Amalfi, and the code discovered at Ravenna, were instantly appreciated, where any progress was made in letters and social arts. In Italy, Spain, France, and in part of Germany, they were received with superstitious veneration. They were taught in the schools as the most admirable precepts of wisdom, and they were appealed to as oracles for the determination of private differences, where the imperfect codes of those nations were silent. Alphonso the eleventh, of Spain, ambitious of the title of legislator, established a uniform code through his kingdom, based on the civil law, having regard to peculiar and local customs. His example was imitated by John of Portugal. In France the civil law was every where gladly consulted, when the customary law fell short of its purpose: and a people emerging from the state of barbarism, must often experience the poverty of laws, framed alone for the simplest state of social life. The same judge who pronounced the customary law, had also recourse to the civil law for help, when the customs of his own country no longer served him. Very different was its reception in England; whether to be attributed to ignorant obstinacy, or to that unbending disposition, which indicates in its rough state, that gem, which becomes a noble manliness and independence of character, under the influence of reason, certain it

is, that it was at first opposed with savage ferocity.\* Instead of retaining and incorporating their favourite customs, they chose to reject the whole code. Yet what says one of the most enlightened law writers England has produced ; “ there is no reason,” says Sir William Jones, “ why we should not shorten our labours by recurring to the laws of Rome.” Early in the thirteenth century, the English clergy, who then occupied both the bar and the bench, and to whom was confined nearly all the learning of the age, attempted the introduction of the laws of Justinian ; but this was opposed with indiscriminating inveteracy by the same barons, with the whole force of that prejudice and bigotry, which prevails amongst rude people, who are inimical to the introduction of any thing new, from the inveteracy of habit and the pride of ignorance. The spirit of opposition carried them to ridiculous extremes. An act of parliament imposed an oath on every person, in a judicial station, to support the *laws of the land*, that is, the common law, as distinguished from the civil. The clergy were now driven from all the legal offices which they before had filled, and no judicial function, excepting that

\* The enmity to the laws of Justinian may perhaps be chiefly referred to *the definition of law* in the institute, which refers it entirely to *the will of the prince*. But this had nothing to do with the code itself.

of chancellor, which was then scarcely known, was retained in the hands of any ecclesiastic. The effect may be easily imagined. The common law administered by laymen, in a bigotted manner attached to their own customs and usages, stubbornly adhering to the mere letter or words of the rule, and refusing to go a single step beyond them, these rules were soon found entirely inadequate to the purposes of justice, among a people who were every day experiencing some improvement.

The laws of a rude people are no more suited to a refined state of society, growing out of improved agriculture, extensive commerce, and manufactures, than the bark hut, or skin cloak of the savage, to the man of civilization. To this narrow-minded adherence to the letter of the law, we may trace the slavish obedience of the present day to the magic of precedents.\* The suitors, probably in a thousand instances, finding no redress, in cases, where, according to the plainest dictates of natural justice,

\* See a remarkable case in 4 T. R. 560. A person was there actually condemned by an *ex post facto* law. It had been established by former adjudications, that an act of parliament takes effect from the beginning of the session; and an act passed at the close of the session, had rendered penal what was before lawful; the fact charged was committed between the time of the *legal*, and the *actual* passage of the law: adjudged guilty. Here was a sacrifice of principle to precedent. The law was afterwards corrected by statute.



they were entitled to it, must have frequently retired from the courts, with disappointment and disgust. 3 Bl. 49—50—51. 54—1 Harrison's chanc. 5—10 Cooper ch. 23. 1 Vern. 178. Application was therefore made to the king in person, as the supreme judge of his kingdom, who referred the petition to his chancellor, usually a pious ecclesiastic, and the remedy found here, even according to Blackstone, was, until a late period, desultory and uncertain, depending on the private opinion of the chancellor. In process of time, the whole equitable power of the king, in civil matters, was *delegated* to the chancellor, who became one of the highest judicial officers in the kingdom. But it does not appear that any regular connected system of chancery law, was formed, even as late as the time of lord Bacon, who may be said to have sketched its outline. Perhaps the uncertainty, and looseness, of the proceedings in the court of chancery, in his day, may serve, in some measure, to account for the lamentable fall of that wonderful man. It was not until the year 1673, that under sir Hineage Finch, the system of equity assumed a regular form, or that the chancellors began to consult the decisions of their predecessors for their guidance. All the early writers speak of the chancellor's powers, as purely discretionary; nor do I think the day has yet arrived when the system has attained its utmost point of perfection; when every possible case is provided



for by precedents; when it has ceased to be necessary to appeal to the principles of natural justice; or, that the discretionary power which the chancellor *at first possessed*, may be considered as entirely taken away. That it has been narrowed, I admit; but, I must contend, that enough is left for all the purposes we may require.

I have rapidly passed in review, the history of the chancery power, from its rise, down to the formation of the present system of equity; I will take a glance at the other principal branch of English jurisprudence, from the time of its unhappy separation---a separation, like that of body and soul: for at first, it was, in fact, a separation of the letter of the law, from its spirit. It is unnecessary to repeat what has been said, with respect to the inconvenience and embarrassment which ensued. All writers agree as to the original deficiency of the common law. It consisted of little more than a few scraps of the civil law, mingled with the rude customs introduced by the Saxon, or Danish conquerors.\* The compilations of Alfred, or Edward,

\* The Roman law was in full force in England as late as the emperor Severus. The much-famed civilian, Papinian, was for some time the chief judge of the Prætorian court at York, and had Paul and Ulpian for his assessors. *Dion. Cassius in vita Severi*. It is to be presumed, that the code of Alfred, supposed to be lost, but which may only have lost its name, incorporated many of the laws which

could not have been voluminous. At a time, comparatively modern, notwithstanding the accessions from the civil law, which are visibly such, it was but a disconnected bundle of rules. It was scarcely before the modern times of Coke and Bacon, that it had begun to assume a respectable form. Bacon has observed, that, as the English language is so much the richer, by reason of accessions from others, so, the laws of England are the better for being borrowed from every other nation. I cannot refrain from expressing my regret, that they had not borrowed more freely from the code of Rome. The rapid melioration in the state of manners, gave rise to a thousand wants before unknown, wants by which men are rendered more dependant on each other,

had been in force in the country, before the Saxon conquest. As late as the fifth, and even a part of the sixth century, the population of England was as enlightened as any portion of the Roman empire, and there is every reason to believe, that the barbarian conquerors pursued the same course as in the neighbouring countries. It is invariably observed, that the barbarous nations who had settled themselves in the civilized provinces, were more apt to assume the manners and habits of the vanquished, than the latter, to adopt the usages of their rude conquerors. It is therefore, even now, extremely difficult to say, how much of the common law is English, or Saxon, and how much of it Roman. No inconsiderable portion of the civil law, was also infused into it, by the French lawyers, after the Norman conquest.

and society is linked more closely together. The deficiency of the common law became so apparent, that the judges, not possessed of sufficient boldness to consult at once its spirit, were compelled to resort to the invention of ingenious fictions, and to a thousand intellectual distortions and subterfuges, to escape from the cave of ignorance, and reach the light of reason. They dared not openly call in the aid of some other code. The extraordinary subtilty of distinctions, and complexity, which now took place, is at once a subject of regret and admiration. The pleadings, more especially, had become so lamentably intricate, and so replete with absurd refinements, as to be productive of frequent injustice, and it required the potent interference of a statute to cut away the inextricable web, in which the law had been completely entangled. It had become a labyrinth, where, like that of Crete, none, without the order of Minos, could enter, and from whence it required the clue of Ariadne to escape. A slavish adherence to the mere letter of the law, may often times be productive of the greatest injustice---may often be the extreme of wickedness and folly.

It was not until the court of chancery had acquired the most decided preference, that the common law underwent a sensible improvement, from repeated acts of parliament, from the commentaries of great lawyers, and from the interpretations of more liberal and enlightened judges. The *spirit* of

the law, began to be consulted here, as well as in the court of chancery. This was even carried so far, as to become the subject of complaint; inasmuch, as it augmented the difficulties of exactly defining the boundary which separated the two jurisdictions. To this cause, we may, perhaps, ascribe the doctrine which prevails at this day, that, excepting in the mode of proceeding, there is no difference between them. But, I again demand, if the chancellor ever possessed the power of supplying what the law had left imperfect, by recurring to the fountain of equity, when was this power lost or withdrawn---when was that fountain dried up? It is conceded by all writers, that in every well regulated government, there must be somewhere a power of supplying what is defective in the code of laws, and of preventing the happening of injustice, in cases where no provision has been made. Fonb. 6. Coop. 38---1 Bl. 62.---Such is the unavoidable imperfection of all human laws and institutions, that new and unforeseen cases will still continue to arise, and which can only be decided by the *spirit* of the law; cases, which, if presented to the mind of the legislator, when the rule was formed, would have been embraced. It is this spirit which deserves the name of equity; it is this which was possessed by the Roman Prætor, to whom it was intrusted, for the purpose of aiding, supplying, and interpreting the law: *juvare, supplere, interpretare, sed non mu-*

*tare*. It exists in every court in the world, except, until of late, in the English court of law; it existed before the unnatural separation of law and equity, in England, and is even said to have been exercised both by the *Aula regis*, and the Wittenagemote. This separation is not unlike the custom which prevailed in the Roman theatre, where one performer gesticulated while another spoke. The court of law has come, at last, to speak, as well as gesticulate, and hence proceeds, in some measure, a confusion of tongues.

I challenge any one to point out to me the time, and manner, of withdrawing from the chancellor the power which he once possessed of providing for new and unforeseen cases, where the law is silent, but where there is a right for which the law ought to provide. Fonb. 23. Mitford 120—Harrison 15—Cooper 282. I do not ask the chancellor to make, or change the law, but I ask him to apply the principles of natural justice, where a case occurs, in which they are the only guides. I do not deny that the chancellor is bound by positive law, where the law meets the case; I do not pretend that he should consult the mere circumstances of every case, or be at liberty to consider the hardship to persons, in the operation of some positive general law. No, it is his duty to bow to the laws like every other judge. I do not pretend that the chancellor should have the power of putting aside the rule of primo-



geniture, because the eldest son is unworthy, while the other members of the family are meritorious. To alter the canons of descent, would be to put himself above the legislator, instead of giving a more perfect effect to his intentions. It is the rule of the common law that land shall not ascend—that it shall not go to a brother of the half blood, but rather escheat—that it shall not be liable to simple contract debts—that personal actions die with the person—that a devisee may be in a better situation than the heir—these are positive rules which the English chancellor has no discretion to suspend. It is true that in this country, in most of these cases, a more enlightened rule prevails, and many of the withered branches have been torn from the tree ;\* but the praise of these acts is due to the legislature, with whom the necessary power resides. I do not deny that the chancellor ought to be guided by precedents, that he should follow them in cases even

\* The improvement which the English common law has undergone in this country is wonderful. For thirty years a silent revolution has been rapidly advancing through all the states. It is yet far from having completed the work of reform. What is somewhat remarkable, this revolution is less to be attributed to the wisdom and liberality of our judges, than to the general diffusion of information among the people. A still mightier revolution in the legal system is fast approaching; in the language of Paine, “it approaches nearer, and still more near.”



where their reason may not appear to him perfectly satisfactory. It is undoubtedly proper, on the score of public policy, that much regard should be paid to certainty and uniformity of decision; but we should also beware that this be not carried to an extreme, which may sacrifice justice and principle to doubtful precedent. I am willing to concede that we have gained much by the system which has already been created out of the decisions in chancery; but I must also declare my opinion, *that we have lost much*, if in consequence of this progress, the power has been withdrawn from the chancellor, of providing for new cases, where justice requires it, and which a statute, by reason of its prospective operation, cannot reach. I do not pretend that the chancellor has authority to pull down the edifice, or change its form; this might lead to dangerous consequences; but until the edifice be complete and perfect in all its parts, every chancellor is an architect, and as such may add another stone to the building. The case which I now advocate is altogether new—it runs counter to no positive law, and is within the reason of no contrary precedent, or decision, or rule of practice. I, therefore, call upon the chancellor to interpose, and to prevent the happening of injustice, in virtue of those ample powers with which he is invested by the nature of his office—I ask the chancellor to seek the fountain of equity, and draw from its living waters—to de-

cide as the first chancellor would have decided—the first chancellor, who was the delegate of a king—the chancellor of Maryland, in the fulfilment of his high trust, is also the delegate of a king—but not of an earthly king.

But I will be told that the rule of law on which the respondent grounds his demurrer, is of that positive kind that claims implicit obedience. This leads me to consider the nature of the rule itself on which he relies, and I trust I will show that as respects the present case, it is no better than if no rule of the kind existed, for it is not applicable. As a general rule, I admit, that *a mere witness cannot be made a party*; but I will contend, that if the reason on which it rests, is wanting on the present occasion, our case must rest on the principles of natural justice, and the chancellor must resort to his general powers, which authorize him to apply those principles to anomalous cases.

It will surely not be contended that this rule is one of the *landmarks of the law*, which, on the score of public policy and the safety of third persons, ought not to be removed. It is no positive, and arbitrary precept, like the canons of descent; it is no solemn adjudication which cannot be disturbed without unsettling the right to property held under it. No—it can lay no claim to such high authority. It belongs to that artificial system, contrived by courts, for the purpose of ministering in the appli-

cation of the laws and the principles of justice ; a system founded on good sense, claiming no imperative force, further than as it is auxiliary to the administration of justice, and consonant to sound reason. It is a mere rule of practice, first adopted for convenience, and which comes not within the scope of the ground of refusal, because *ita lex scripta est*. If any part of the system of common law, can justly claim the name of a science, it is that which has grown up in the courts, to facilitate the administration of the laws ; and more particularly, the rules, which relate to evidence, are founded purely on reason, and even when created by statute, a liberality of construction is permitted scarcely known in other branches of the system. Here, indeed, it may properly be said, that the reason ceasing, the law itself ceases ; *cessante ratione, cessat et ipsa lex*. In fact, the *reason of the law*, is here the law itself ; otherwise it would be an empty sound, a shadow, a mockery. Whenever this artificial system, if implicitly pursued, would defeat the end of its creation, it is made to yield, and to be subservient to the great ends of substantial justice. The case is either admitted as an exception, which falls properly within the reason of the rule, or as entirely anomalous. Surely it would be more proper, to be altogether without such rules, if they should, in any instance, defeat the object which they were designed to protect. I would refer the chancellor to the

case in 3d Equity cases, 410, where lord Hardwick, with the assistance of the other judges, decided, that a Gentoo might be sworn after the form of his own theology, although the law to the contrary was laid down by Coke and other writers. On that occasion, Chief Justice Willes used these expressions; *but there is one rule, firm, eternal, and immutable, which never can vary, the rule of natural justice; and I apprehend these rules of evidence, are, under proper circumstances, and on proper occasions, to give way to that.*

There is, indeed, scarcely one of these rules, however positive it may appear, that has not admitted exceptions on proper occasions; and for the same reason that the first were admitted, will continue to admit others, when proper cases are presented. What rule is there better established, than that one cannot be a witness for himself? And yet on the statute of hue and cry, from *the necessity of the case*, a plaintiff has been admitted to testify. It is a rule that husband and wife shall not be witnesses for or against each other; yet a bankrupt's wife, from public policy, or *the necessity of the thing*, has been compelled to discover the effects of her husband: 1 Wills. 611. A plaintiff without such necessity, may be a witness, when the reason which would exclude him, in common cases, ceases to operate. 1 Pocr. Will. 289. These rules, adopted by the courts to facilitate their proceedings, give

way in the same manner, when justice requires it. There is no rule better established, than that all persons interested, shall be made parties to a bill in chancery, but this has yielded to many exceptions, where justice required them, and where the reason of the rule did not forbid. Where one of two partners happen to be out of the jurisdiction of the county, a suit brought against the other alone, will suffice. 2 Atk. 510. The rule has been dispensed with, in the case of creditors suing for an account of their deceased debtor's estate, and in that of legatees, where one may sue for all the rest; a few may likewise represent the whole, in the case of societies, composed of numerous members. And why were these rules pushed aside, after having been firmly established? Because, in the particular instance, their enforcement would be destructive of the very end of all law. In opposition almost to the very words of the statute of frauds, a party has been compelled to discover whether a devise was not made to him for a purpose not expressed in the will! The law will not suffer a statute enacted for the purpose of preventing fraud, to be the instrument of fraud. Cooper 59. The court will not suffer the rules adopted for the security and facility of justice, to be perverted to the means of injustice.

There is another exception to the rule, that all persons interested must be made parties: the want



of parties, is no objection to a mere bill of discovery, like the present; as no relief is prayed, there is no subject of litigation: for as the reason of the rule, the preventing a multiplicity of suits, and the discouraging of unnecessary litigation, does not apply, the law itself has no application. Eq. cas. ab. 170 —Mitf. 220. I now assert with confidence, that the rule of practice, under which the defendant would shelter himself, was not made for his case, because the reasons upon which it is founded, on this occasion ceases. Is there any difference in the nature, or character, of the rule opposed to us, from those already cited? Has it thus far refused to admit exceptions?---Must we yield faith and obedience to it, without daring to question the reason on which it stands? No---it is not only of a nature precisely similar to all the others, but has actually admitted exceptions when the reasons required. "The exceptions to this rule," says Cooper, "are the book-keepers of a corporation, agents, auctioneers, and some other persons." This is sufficient to show, that, however positive the rule may have been originally, it has given way, at the requisition of justice and sound policy. I will now examine whether reason applies to the present case.

Before I enter upon this examination, it will, in the first place, be proper to see how far the rule is at all applicable to our local situation, and peculiar institutions. It can hardly be supposed, that every

rule of practice, or of evidence, (unless founded upon the immutable principles of justice, the same in every land, and in every age,) framed by the British courts for the purpose of regulating their proceedings, should be received without allowance, or modification, by courts differently organized, and existing under different circumstances. There are laws, which grow out of a certain state of things, which, in that state, may be consonant to justice, but which, in a different state, may be directly the reverse. In Holland, the killing a stork, is a capital crime, because that bird contributes to preserve the dykes, upon which the safety of the country depends; but it would be ridiculous in this country, to estimate the life of a stork as highly as that of a man. In England, there may be good reason why a witness, *in no instance*, can be made a party; there may be no necessity for it; but this may not be the case here. But even in England, a witness may be *made a party, and compelled to pay damages*, for refusing to give testimony. Let us suppose, that in this country, there were no other mode of *compelling him to give testimony*, where is the reason which forbids his being made a party, in a bill of discovery instituted to compel him to testify? But is there not an evident and material diversity, between the constitution and relations of our courts, and those of Great Britain? Are there not many important circumstances peculiar to each? All the

English courts derive their power from the same source, and their proceedings are corrected by the same authority: this alone is a material difference. The high court of chancery extends its power over the whole kingdom, although inferior courts of chancery are established. In this country, the state courts derive their authority from different and independent sources, and their decisions are not subject to revision out of the state.

It will not be pretended, that the judicial establishments of the different states, are on the same footing with relation to each other, as the courts of Great Britain with respect to those of France, or other foreign country.—Even there, a disposition to harmonize with each other, in the administration of justice, prevails to a great extent; for justice, like the sciences and the arts, should be of no country. In the United States, we are one nation, separated in a most original and peculiar manner, by distinct political boundaries, but which have no material influence on the habits, transactions, and intercourse of business. Abroad, we are known but as one people; at home, every thing of a national character, is intrusted to one general government. Sensible, however, of the inconveniences which must ensue from our domestic relations, being thus fettered by our political institutions, every means have been adopted which would tend to lessen them. The federal constitution, the different legislatures,

the courts of the United States, and of the individual states, have all concurred in labouring to obviate, as far as possible, the difficulties which from time to time may have been observed. The authentication of records and papers, has been provided for by laws; the courts have decided, that the judgments of the courts of a sister state, are domestic, not foreign; and they have gone far towards doing away any ideal and unnecessary distinctions, by declaring, that the discharge of an insolvent debtor in one state, shall be a discharge in another. In every instance, where the subject has presented itself, the courts have manifested this kind of liberality; a liberality, which is uniformly the interest of the whole. No possible danger or inconvenience can result from its being carried to extremes. Occupying portions of the same soil, speaking the same language, enjoying the same free institutions, allied in the closest manner by the ties of consanguinity, and all the varied transactions of business and social intercourse, if such a liberality did not exist, our wise political systems, devised for purposes of a different nature, would be productive of the most serious embarrassments. In fact, the same intimacy of relationship, exists between different states, as between different counties of the same state.

Am I not justified, therefore, in saying, that the relations which the different states hold toward each other, is of a different kind from that which

Great Britain holds to foreign countries? And it follows, that the courts of chancery in America, are on a different footing from the courts of chancery in Great Britain; and the rules formed to regulate their proceedings, are not to be received in all instances in this country, without making a proper allowance. I will put a case, which will illustrate my meaning; suppose it were agreed on all hands, that the present defendant is a proper party, to be compelled to discover, but that the discovery is sought in aid of a *court of chancery* in Virginia; would the English rule be objected to us, that a bill of discovery will not be entertained in aid of a court of chancery or an ecclesiastical court? But in England, these courts can compel a discovery themselves, and from the difference in our situation the reason does not apply. Let us suppose an act of parliament, to have forbidden the courts of chancery to entertain bills of discovery against mere witnesses, would we not, in adopting such act, first examine whether there does not exist such a difference in our situation, as would have been taken into consideration, had the act been at the same time intended for our use? In England, there might be no necessity for this mode of proceeding, because other sufficient means of compelling the witness to disclose facts, had already been devised; but in this country, the case might be different. Is it not to be presumed, that with a knowledge of the possible



occurrence of a case like the present, we should have been excepted from the too general operation of the law? And if we had not been, would not a sound and equitable construction of the statute have procured for us such exemption? But this is no positive enactment of the legislature; it is a rule adopted originally by the English courts, founded on justice, calculated for convenience in the despatch of business, and arising out of a judicial organization, in a great measure peculiar to herself.

If, then, the rule, from the mere circumstance of having originated in a different state of things, and being adapted to courts differently organized, is to be taken with allowance, what are we to say when the reason upon which it is founded ceases altogether? When, in a case similar to the present, even in England, were it possible for such to occur, the rule would be compelled to give way.

What are the reasons given for this rule, that a bill of discovery will not be entertained against a mere witness? They are two; first, because the witness, not being interested in the cause, may be compelled to give evidence in the courts of law; secondly, because the testimony or discovery cannot be made use of between other parties, and the court of chancery will not sit to do what is idle and useless. The first does not apply to this case; for the court in Virginia cannot compel the witness to give evidence, having no authority over the citi-

zens of this state. The witness is therefore precisely in the situation, in which a party would be in a suit at law ; where, in consequence of there being no power in such court to compel a party to give evidence against himself, resort is had to a court of chancery. When the situation and reason are the same, why is the law at variance ? In the first case, the court of chancery interposed, because of the want of power in the court of law, and because, without this interposition, a party might be denied a natural right ; and when a witness appears to be in the same situation as parties generally are, is there not the same reason, justice, or necessity, for the interposition ? What is it that is sought in both instances ? *It is the knowledge of certain facts, confined to the breasts of the parties, or of the witnesses, which they are bound to disclose, in order that justice may be done.* If courts will compel even parties to disclose facts which may be prejudicial to their own interests, is there not a still stronger reason to compel mere witnesses to testify ? Upon what does the chancellor's power act in these cases ? It is upon *the facts*, no matter in whose possession they may be. And why, I will again ask, is a party thus called upon to bear witness against himself, or why is a bill, on any occasion, filed for the mere purpose of procuring testimony ? It is because the courts afford no sufficient remedy.

The court of chancery will not interfere in aid

of an ecclesiastical court, because that court can, itself, compel a party to discover. In fact, the true rule is, not that a mere witness shall not be made a party to a bill of discovery, *but that there are other means of obtaining his testimony*: this, in the earliest books of chancery reports, is the reason given for refusing to entertain such bills.—1 Vern. 213. It was at a subsequent period, that the words of the rule were changed, when it was observed, that, according to the judicial system of Great Britain, a witness could, in all cases, be compelled to give testimony: yet, even there, if this were found to be a mistake, the reason of the rule would still be regarded as the rule itself. In the case cited, the interposition of the chancellor's power was denied, because the plaintiff had other means of obtaining the testimony; and, in another case, (3 Atk. 215,) it was denied, because the *party could compel the witness to be examined at law*. Let the defendant show us how we can obtain his testimony by compulsion. Will it be said, that we might institute a bill to perpetuate testimony, or to take depositions *de bene esse*? Of what use would this be to us, and would the facts warrant such a procedure? Could we make affidavit, that being in possession of real property, we were apprehensive of a lawsuit at some future period, when our testimony would be lost? or that the witness was infirm, or about to depart the state? This would be absurd in the highest de-

gree; these are remedies provided for in cases altogether different.

There is no mode in our power, of compelling the defendant to disclose the facts within his knowledge, but the present. The rule under which he has therefore sought to shelter himself, has no application as it respects this case, being divested of its reason; it is mere words without sense or meaning. The exception in the case of the corporation, shows the principles upon which the courts have acted. There, as the corporation could not be compelled to give evidence, because incapable of an oath, or liability for perjury, the secretary, a mere witness, was made a party, for the purpose of procuring a discovery of facts. This, it is said, was founded upon *the necessity of the case*; and what is this necessity? Unless we are to understand that justice required the exception, or rendered it necessary, I am at a loss to know the meaning of the term as thus applied. And does not the same justice, the same necessity, exist on the present occasion?

“But,” says the respondent, “I fear this discovery can be of no use to you, after you shall have procured it, for the court in Virginia will not receive it in evidence.”—This is truly a kind solicitude for our interests; it would have been more thankfully received, however, if the witness, instead of shielding himself behind the excuse, “I cannot be compelled,” had deigned to testify in the

first instance, before the commissioners. In order, however, to satisfy his mind on this score, I will endeavour to show to him that it will not be altogether useless. This court will certainly not indulge a party in mere whim or caprice, or lend its aid in things which can be of no substantial benefit. The court will not entertain a bill of discovery, or one to perpetuate testimony, where it is evident that the plaintiff has no title; nor will it lend its aid to procure a mere *ex parte* affidavit, not sought with a view to any cause depending. But the court will presume that we have not gone to the trouble and expense of filing this bill, in order to procure what will be altogether useless to us; the presumption is, that it will be of use. It must appear to the court, that its aid is sought to no purpose; is this certain in the present case? Will the court of this state undertake to say, under what circumstances the court of Virginia will admit testimony? I presume there was no inquiry of this nature, when the court of chancery in England entertained a bill in aid of the court in Spain! And is not this reason to be taken in conjunction with the first? Is it not rather a consequence of the first? Would not the same justice and necessity which compelled the witness to answer in this court, demand the admission of his discovery in the court of Virginia?—How was it in the case of the corporation? Besides, this second reason is founded upon a rule to which there are also



exceptions ; the reason why *ex parte* testimony shall not be admitted, is, that the party against whom it is offered, had no opportunity of cross-examining. Suppose it should be made to appear, that, in consequence of the act of the party, the witness was induced to withhold his testimony, at a period when the party had an opportunity of cross-examining, would it not be monstrous if he were permitted to avail himself of such a subterfuge? After having prevented the witness from giving testimony, on a proper occasion, he complains of the want of opportunity to cross-examine! The bill, I believe, sufficiently shows that such was really the fact. There is no doubt, but that, in such case, the court of chancery in Virginia, would enjoin the party from opposing the reading of the discovery in evidence, although *ex parte*. The court of chancery in England, has interfered in similar cases, where the testimony was not admissible by the rules of law. 1 Eq. Ca. 73.

There are further exceptions respecting the admission of *ex parte* testimony: depositions may be given in evidence, at the suit of a factor. Bull. N. P. 237. In the present case, the respondent is a broker, who transacted the business between the parties, which has given rise to the suit ; according to the decisions, he is the agent of each. 2 Esp. 456. Again, *ex parte* testimony may be received to contradict what a witness has sworn in another

cause. Peak 28, 29. This sufficiently shows, that the testimony of the respondent, is not necessarily useless. But, all these objections may be obviated by the decree of the chancellor: the respondent may be attached to testify, under the commission; his fears of our not being able to use his testimony, will thus be removed.

What now becomes of the respondent's demurrer? It is founded upon no law, for the reason of failing, the law itself ceases to exist. He has attempted to shelter himself, therefore, under the mere dead letter of the law. He admits the facts set forth in our bill, for such is the legal effect of his demurrer; 1 Veazy, 427. He admits that we have a right to his testimony; that it is important to us; that our cause cannot safely be tried without it; that we have no other mode of compelling him to give testimony; but he is resolved to take advantage of what he supposes a defect in the organization of our government; and he refuses to do what is consonant to natural right and justice, because there is no power to compel him!

Upon this very demurrer, then, do I rest my claim for the interference of the chancellor. The respondent himself furnishes the weapon with which we attack him. He admits our right, but denies that there is a remedy for us any where. It is for that very reason, we seek for it here.

The presumption of law is in favour of a bill

of discovery, because it is founded on natural justice ; and it becomes the duty of him who resists, to show reasons, to satisfy the court, why the party seeking, ought not to obtain it ; either because he has no right to such discovery, or because the respondent may claim some personal exemption. The respondent cannot prevail on this demurrer. It is not possible that a party can be dismissed from this court, (whose very business it is to provide for the anomalies of the law,) and be told that his right is clear, but remediless here and elsewhere. I cannot suppose that, under the dead letter of the law, a fellow citizen can excuse himself, from the performance of one of the most important duties of social life. It is utterly impossible that there should be so monstrous a defect in our political system, as to leave the citizen in many situations, without the ability of coercing the means of defending his liberty, his life, his property, or reputation. This would almost tempt me to be an advocate for arbitrary power. But no—the thought is impious. Let me rather be a beggar in a republic, than obtain riches and honours by supplicating a throne. The sentiment of the poet I always viewed with detestation ;

———*Nunquam libertas gratior extat,*  
*Quam sub rege pio*———

There may have been a good king ; but the best has been surrounded with a haughty crowd of

worthless nobles, the least of whom could be a tyrant and an oppressor. The feeble voice of the cottage, is not easily heard beneath the canopy of the throne. But the animating soul of a republic of laws, gives life, and vigour, and importance to the humblest member of society. Like nature herself, its seat is no where, while its vivifying influence is felt in every part.

Thus far, I have considered the defendant as a mere witness; but this is by no means clear. If we understand by the term, a mere accidental spectator, or one who casually becomes possessed of facts, or even one who is called for the express purpose of being a witness, to a deed or will, this would certainly not be our case. The defendant to the bill is something more; he is not merely a witness, he was the agent of the transaction, respecting which the suit has been instituted. I must confess, that the law, as to the distinction between a mere witness and one who is sufficiently a party to be compelled to discover, is not yet clearly defined. There is undoubtedly a class of cases, in which the witness is considered either in the light of an exception to the general rule, or as sufficiently a party to be joined in a bill of discovery; "such as agents, auctioneers, and some others." 3 P. W. 266—6 Veazy, jr. 7 Veazy, jr. 289. In the case of 7 Veazy, jr. the demurrer was allowed, because in that particular instance, the party was considered *too purely a*

*witness* to be joined in a bill of discovery. Probably, the true criterion would be the coming within the scope of the transaction, at least having some important agency in it. The kind of relation, which a man bears to the parties, when thus situated, is very different from that of a mere witness. He is the agent of both, derives a profit in the business, becomes intimately acquainted with facts, and ought to act fairly and impartially to each.—The defendant is a broker; and as such, transacted the business of the parties; it is, therefore, his duty to show no partiality to either. There is also another point of view, in which he may be regarded as a party. It is laid down, that an arbitrator who has been guilty of impropriety in his award, may be made a party, and compelled to discover; so also a solicitor who assisted his client in a fraud; in the present instance, the broker assisted in a usurious transaction, in taking advantage of the necessities, in defrauding the plaintiff. It is then by no means clear, that the defendant is a mere witness. Cooper, Eq. 201.

Thus fortified by reason, justice, and the laws of the land, I leave the decision to the chancellor; with perfect confidence, that on whatever side the balance may preponderate, it will be the result of a wise and equitable judgment.



# **SPEECH**

OF

**H. M. BRACKENRIDGE,**

DELIVERED

IN THE HOUSE OF DELEGATES OF MARYLAND, 1818,

ON THE

**JEW BILL.\***

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MR. SPEAKER,

Could I, for a moment, suppose it possible for the bill on your table, to lessen, in the slightest degree, by its passage, the attachment we all profess, for the religion in which we have been educated;

\* This speech was published in a pamphlet form by the Jews of Baltimore, and widely circulated. The bill had been lost, but public attention was awakened to the subject, both in Maryland and other states, and the matter was afterwards brought before the legislature, at each succeeding session. It gained strength, and after a struggle of six or seven years, prevailed. In Baltimore, it became a *sine qua non* of the election of the delegate, to avow himself in favour of it. The speeches of Mr. Worthington, and of Mr. Tyson, the first in the session of 1824, the other in the subsequent session of 1826, are published in this volume. I regret that I have not the speech of Mr. Kennedy, of Washington, the first mover, and indefatigable supporter of the bill.

or could I bring myself to believe, that even those innocent and harmless prejudices, which more or less influence the opinions of the most liberal, are treated with disrespect by bringing the subject before this house, I should be the last person to urge it on your consideration.

But, sir, I feel a firm conviction, that there is no room for any such apprehensions. The known public and private worth, (if I may be allowed thus to express myself in this place,) as well as the firm and fixed religious principles of the gentleman, with whom the bill has originated, and who has supported it in a manner so becoming the enlightened American statesman, and the tolerant Christian, must necessarily repel the suspicion of any but the most generous, disinterested, and philanthropic motives. In the theological view he has just taken of this interesting subject, he has most satisfactorily proved to my mind, that there is nothing in the religious faith which we profess, that enjoins us, to hold to the arbitrary test engrafted as a principle on the constitution of this state, at this day, when it is converted into a stain, by the progressive wisdom of the political world. To the test of that wisdom, I will, nevertheless, endeavour to bring the question now before the house. I will endeavour to show, that the objectionable provision in our constitution, is at variance with all the sound, and well established political creed of the present

enlightened age. For this, I will refer to the opinions publicly avowed, and successfully maintained, by every distinguished statesman, not only of America, but throughout the civilized world. In addition to this, I will show, that the principles for which I this day contend, have received the unequivocal sanction of the most enlightened and respectable political bodies of our country. The subject, although of a most fruitful nature, properly resolves itself into three questions. 1. Have the Jews a *right* to be placed on a footing with other citizens? 2. Is there any urgent reason of state policy, which requires that they should be made an exception? 3. Is there any thing incompatible with the respect we owe to the Christian religion, in allowing them a participation in civil offices and employments?

In ascending to first principles, (and in examining institutions supposed to be founded upon them, we must often do so,) I find that we have duties to perform to our Creator, as well as to society, but which are so distinct in their nature, that unless their corresponding obligations be clearly understood, we shall in vain attempt to lay the foundation of a solid and satisfactory argument. It is unquestionably the right of society to compel every one who enjoys its protection, to conform to its ordinances and laws. It is its right so to restrain his *actions*, as to conduce to the general happiness and

prosperity. But I contend, that after having exercised this control over his actions, the temporal power has reached its limit; and when it dares to pass that limit, it opens the way to oppression, persecution, and cruelty, such as the history of the world has furnished but too many melancholy examples—not for our imitation, but abhorrence. Opinion, when merely such, when prompting to no act inconsistent with the laws and peace of society, should be encountered only by opinion; and on such occasions the interposition of the temporal arm is improper, however mildly interposed. For it is not the extent, or degree, of compulsion, which renders it improper, but the unjust and arbitrary interference itself. If, as members of society, we have duties whose performance the temporal power may justly enforce, we have, as rational beings, other duties of a much higher nature, to our Creator, of which he is the judge, and to whom, alone, should be referred the punishment, or reward, of their fulfilment or neglect. Religion, therefore, merely as such, is a matter entirely between man and his God. If my position, then, be correct, it will follow, that it must be left to every citizen, as he is to stand or fall by his own merits, or demerits, to entertain that belief, or offer that worship, which in his conscience he thinks most acceptable; and should any of his fellow-citizens desire to release him from what he conceives to be the bondage of

error, let it be by an appeal to the reason, and not by a resort to coercion—a coercion which can only affect outward actions, and serve to exhibit power on the one side, and feebleness on the other. He that is thus convinced, will be of the same opinion still. The human frame may be bound in chains; it may be imprisoned and enslaved; it may yield to the dagger of the assassin, or the murderer's bowl; but the immortal mind soars beyond the reach of earthly violence. Upon the self-evident truths which I have spoken, (and on no others can they safely rest,) are built the RIGHTS OF CONSCIENCE, so little understood, or at least respected, in most countries, not so well, I confess it with regret, in Maryland, as they ought to be, but perfectly so in the constitution of the United States; an instrument for which we are indebted as a nation, to the high estimation of enlightened men, and which has conferred on our country, the reputation of being the land of freedom and toleration.

And here, I find it necessary to encounter an argument of those gentlemen who oppose the passage of the bill; they tell us, that no *force*, or coercion, is resorted to by the constitution of Maryland, in consequence of religious faith—that every one is secured in his civil rights, no matter what religion he may profess—that no one can be molested on account of his religious belief—that no one has a right to complain of being denied some com-



mon benefit, or being excluded from holding offices, when he does not think proper to conform to the prevailing religious tenets of the community of which he is admitted a member. Sir, I contend, that in conformity to the reasons I have advanced, *every* citizen is entitled to *all* the privileges of citizenship; that the religious opinions of no one can be justly visited upon him, either directly or indirectly, as the immediate or remote consequence of that opinion. If, on account of my religious faith, I am subjected to disqualifications, from which others are free, while there is no paramount reason drawn from a regard to the safety of society, why I should be thus excepted, I cannot but consider myself a persecuted man. The persecution may be but slight in its character, but still it must bear the detested name of persecution. It is true, it is not the fagot, or the wheel, but it is applied for the same reason—because my opinions do not conform to those of the more numerous, or more powerful.

An odious exclusion from any of the benefits common to the rest of my fellow-citizens, is a persecution, differing only in degree, but of a nature equally unjustifiable with that, whose instruments are chains and torture. In our land of equal rights and equal pretensions to the dignity and emolument of office, to be subjected to a degrading exception, is by no means a nominal punishment.

Sir, in the sentiments which I have uttered on

this occasion, I have done nothing more than repeat what has already been so often and so much better expressed, by the enlightened statesmen of our country. There is hardly a distinguished American who has not in some mode or other, given to these ideas his decided approbation. They are deeply engraven on the tablets of those political doctrines which are considered as eternal and immutable. They are among the first lessons inculcated on our youthful minds; they are interwoven in the texture of our political constitutions; and so deeply are we impressed with their truth, that every American who aspires to the character of liberality, as well as to a proper knowledge of the spirit of our institutions, must subscribe to this proposition, as the test of the progress of his attainments—THAT RELIGION IS A MATTER BETWEEN MAN AND HIS GOD—THAT THE TEMPORAL ARM SHOULD BE INTERPOSED TO DIRECT THE ACTIONS OF MEN, AND NOT THEIR THOUGHTS.

I will now take the liberty of reading some pages from different authors of this country, who have expressed their ideas in language much more clear and impressive. [Here Mr. B. read several passages from Mr. Madison's memorial on the test laws of Virginia, from judge Tucker's works, and also from a number of other writers.]

Sir, after what I have read, I would ask, whether I am not warranted in saying, that a just criterion might be formed of the degree of proficiency

of any one, in those political doctrines, which so justly and peculiarly deserve the name of American, by the willingness or unwillingness, with which he yields assent to the reasoning contained in those papers? The masterly report of Mr. Madison, doubtless, in its day had to encounter opposition; it came forth at a moment, when we were just struggling to free ourselves from the errors of our political education; it was then regarded as the effort of a bold spirit, declaring a daring truth to his countrymen. And where is the man at this day so rash, so mad, as to stand up against it? That truth has triumphed over bigotry and prejudice; it has planted its victorious standard on that noble monument, the federal constitution—it has prevailed in every member of the confederacy, unless the enemy of toleration, driven from every other place of refuge, should have found a last entrenchment in the constitution of Maryland—which God forbid.

I have hitherto, Mr. Speaker, considered rather what ought to be the right of the citizen, than what it really is, as guaranteed by the recorded monument of his liberties; for it is our pride, that for these, we are not indebted to the charter of a sovereign. And here, I do not hesitate to assert, that could this question be brought before some tribunal competent to decide, I would undertake to maintain, that the right which this bill professes to give, is already *secured* by our national compact;

I would boldly contend, that the state of Maryland has deprived, and still continues to deprive, American citizens of their just political rights. If we cannot find it in the express letter of the instrument, can we hesitate for a moment, in believing, that it has at least virtually abrogated every part of state laws or constitutions, whose tendency is to infringe the RIGHTS OF CONSCIENCE? But first, let me ask, what says your own declaration of rights on this subject?—It emphatically declares, not merely that it is the right, but that it is the *duty of every man to worship God, in such a manner, as he thinks most acceptable to him*. It is true, this is narrowed by the subsequent clause of the sentence, which would seem to confine that worship to the professors of Christianity; and I will not trouble you with a vindication of the enlightened men who drew up that declaration, from the charge of narrowness of mind, in supposing it impossible for any one, conscientiously to worship God, excepting through the medium of Christianity. I firmly believe, that the subsequent expressions were intended to apply to all who *worship the Deity*, and that it was not the intention to discriminate as to the mode; *wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless, under colour of religion, any man shall disturb the good order, peace, or safe-*

*ty of the state, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights.* I will ask, whether the religious test in the constitution of this state, can stand for a moment, when construed by the spirit of this declaration? No, sir, they are utterly incompatible. Let us now turn to the first amendment of the constitution of the United States; we find that congress is expressly forbidden, *to pass any law respecting an establishment of religion.* Does not this speak volumes? And is it not morally certain, that if a declaration of rights had preceded that instrument, the right to worship God free from all human control, or reflection, would have been unequivocally declared? No test-oath is required in that instrument; and can there be a clearer, although but a negative exposition?

It is true, the constitution of the United States, as a form of government, is confined in its operation to the specific objects for which it was instituted. But there are certain broad and fundamental principles, entitled to universal respect; and, without respecting them, it is impossible for the general and state governments to move in harmony in their respective orbits. This, I contend, is one of them, and not the least important. Let us look at the consequence of the contrary, in the practical operation. The citizen, who cannot hold the most trivial office in the state of Maryland, may be chosen to preside



over its destinies, as the chief magistrate of the nation!—He may be called to the command of your armies, and lead you to battle against the enemy who has dared to invade your shores; and yet, he cannot be an ensign or a lieutenant, of the smallest company in the mighty host! He may sit on the bench, and in the federal courts, be called to decide upon the fortune or the life of the citizen of Maryland; and yet, your constitution forbids him, as a justice of the peace, to decide the most trifling dispute? He may be juror in the circuit courts of the United States, and be the arbiter of the reputation, the life, or the liberty of the first among you; yet, under the laws of Maryland, he cannot sit in the same box, to deal out the measure of justice to the pilfering slave! He may be marshal of the district, and in that highly respectable, and responsible situation, be intrusted with your most important interests, at the same time that he is disqualified from performing the duties of a constable! Can it be believed, that such glaring inconsistencies could have been foreseen or imagined, when our political system was put in motion, attuned, as it was supposed, to move in unison and harmony? This clashing discord, of general and state government, could not have been foreseen. Still less could it have been supposed, that discord would have been produced by such a cause. Supported, then, by the spirit of the law, and the strong argument of inconvenience,

I would contend in behalf of the citizen, *that in requiring him to subscribe to a religious test, for any purpose, his just, constitutional rights, are infringed and violated.*

Sir, the history of the American colonies, unpolluted with intolerance, as it has been supposed, compared to the fruitful narratives of the persecutions, which deform the annals of Europe, is, after all, but comparatively pure. Even in this country, the scourge of real persecution has been felt; and as in every other, it has done more injury to genuine religion, than could ever be effected by its avowed enemies. With humility, and mortification, be it spoken, the page of our pure history is stained with persecutions, on account of religious opinion, although the day has arrived, when, in the face of the world, we assume for our country, the proud title of **THE ASYLUM OF THE PERSECUTED!** In some of the colonies, it is well known, that denominations, even of *Christians*, were persecuted *unto death*. The cloudy atmosphere of error and prejudice, it is true, had begun to be illumined by the blaze of the revolution, and then it was, that the framers of our *State Constitutions*, believed it wise, and just, that all sects of *Christianity*, in every part of the union, should enjoy the most perfect equality of civil and political rights. And at this day, do we discover any great effort of liberality in assenting to this self-evident truth? But are we

certain that the enlightened men of those days, had not stubborn prejudices to encounter? The wisdom of nations, like that of individuals, is progressive. What is universal error to-day, is disputable to-morrow,—and the next, receives the no longer to be questioned seal of wisdom. The probability is, that they led the way to the salutary reform, and triumphed by the force of reason, and the weight of their influence. But the reformers of abuses in society, have generally been compelled to compromise with error. Their enlightened minds outrun the times and country in which they live.; Hence it is, that something was still left to be done by our forefathers, at a future and more favourable period. Let any one contemplate the rapid advancement of statesmen, between the recent epoch of our emancipation, and the adoption of the federal constitution, when the sages of our land were intrusted by the general voice, with the awful duty of framing for a nation of the most elevated destinies, a form of government that would secure its peace, prosperity and happiness—and he will be ready to admit, that our political wisdom had not been stationary. An eulogium on the great men who composed the federal convention, and on the work of their hands, would be necessary, for it is written on the heart of every American, and next to the gifts of Divine Providence, it constitutes his greatest blessing. And among the greatest achievements

of that work, in my humble estimation, was that of putting a finishing hand, to that which they found much advanced, it is true, but still incomplete—the final separation of force and opinion—the entire dissolution of the unnatural union between church and state, whose offspring were monsters, born only to feed on the vitals of society. The citizen was declared responsible only for his *actions*; for his religion, he was left to account to his Creator.

Independently of the reflections which led to this decisive course, as one of abstract and positive right, it is to be presumed, they had in their minds, the evils experienced even in our own country, from religious persecution, which, previous to the revolution, had not unfrequently disturbed the peace and good will of the different provinces. For the purpose of preventing the recurrence of these evils, it was intended to secure to every citizen of the union, his personal rights, among the most precious of which are those of conscience. I believe, that any unbiassed man, who will read the federal constitution, must perceive, that it does not consist merely of articles of confederation, between independent states, but that it is a compact, entered into by *all* the citizens, with *each other*, in their individual capacity. The federal constitution, therefore, in respect to civil and political rights, holds forth a guarantee to all and to each. The rights of conscience are unalienable, and imprescriptible;

they are not susceptible of being even voluntarily surrendered—the only office, therefore, which the laws can perform, is to protect, and save them from violation. My argument, Mr. Speaker, leads to this—that no state government has a right to encroach upon what is thus sacredly guarded, by a superior authority. Sir, I do contend that the constitution of the United States, has guaranteed to every American citizen, the right of worshipping God in the manner he deems most acceptable, and that this right is violated, whenever the citizen is made to feel the consequences of his opinions, *either by direct bodily inflictions, or by disqualifications.*

But, sir, even admitting that I have not been able to maintain my position, on the strict ground of constitutional right, at least, it must be acknowledged, that the negative disapprobation of the test by that constitution, furnishes a powerful argument in favour of its positive rejection from that of Maryland. For the sake of decent conformity, for the sake of obviating the glaring inconsistencies which have been exhibited, if for no other reasons, the bill ought to pass. And, I would respectfully ask, whether, even on subjects purely abstract, some respect is not due to the opinions of the enlightened statesmen who framed the federal compact? I know, sir, that to err, is in the nature of man; but, *if I must err, let it be with men like these.*

And, let me ask, what is the rational object, which



this test proposes to accomplish? Does it propose to do *that which can be done by omniscience alone*? Does it propose to discover the inward thoughts of man, to lay open to view the workings of his mind? Does it propose to discover who is the Christian, and who is not? If such be the object, and I can discover no other just or natural one, I will appeal to any man of common experience, to say, whether he really expects, in this way, to discover the true sentiments and opinions of any one? The atheist, if there be such, and the deist, will laugh at this mode of detecting their errors. They will not hesitate to subscribe, what they will consider, an idle *form*. The Jew, and the infidel, unless governed, the one by his religion, the other by an abstract love of truth, can be placed under no constraint by a test, which if they abuse, no earthly power can call them to account. Is it necessary to the Christian? Is he the better Christian for avowing his belief, before he can be allowed the enjoyment of a temporal benefit? No, sir, to him such a test is useless; to others, it is worse than useless; it may make hypocrites, and, I believe, it requires no great stretch of casuistry to say, that the sin of this hypocrisy must rest upon the heads of those who are the authors of the temptation. If any one can seriously flatter himself that the test can accomplish a rational object, it must be as a mode of propagating the faith, among those unbelievers, whose love of truth will not allow them

to be guilty of deception. To these it holds out the *reward of offices and dignities for their conversion*; or denounces the penalty of partial degradation, from the common benefits of citizenship, while they persist in their unbelief. Can it be possible, sir, that in this enlightened age and country, we have not renounced the practice of propagating religion by the sword? Or can it be regarded as any thing else, when temporal rewards and punishments are resorted to, as the means of establishing or maintaining religious opinions? It is impossible for any one seriously to contend, that this was ever in the contemplation of the framers of our constitution. The very clause in the bill of rights, by which the test is supposed to be countenanced, shows the struggle in the minds of those men, between their own opinions, and the necessity of compromising with the prejudices of the times. They could not but have seen, that having once destroyed the union between church and state, to require a religious test for political purposes, was worse than absurdity. Even English writers acknowledge, that in England the test is founded upon this union, and on nothing else. It is well known, that in that country, the struggle between Catholics and Protestants, was a struggle for the government; the test was therefore resorted to, for the purpose of securing political power, and not as a mode of ascertaining religious sentiments. We have borrowed it, as we have many other things

from that country, without sufficiently examining their application to a different state of society and manners. And I hope, Mr. Speaker, it will be renounced, in the same manner that we have renounced other things derived from that source, but unsuited to our present situation. Let us substitute the only *real test* of the qualifications for public office; that of public and private worth, character, and reputation.

Let me not be understood, sir, to contend, that there may not be sound reason and policy for withholding from certain classes of citizens, or people, the rights or benefits of citizens, in their utmost latitude. The existence of servitude, an evil beyond our power to remedy, has given rise to certain ideas and policy, which would be useless in us to attempt to counteract. On this subject, and that of not throwing open to naturalized citizens, the whole career of public offices, *there are reasons of state policy*, so fully established by our laws and received opinions, that it would be presumptuous in me to call them in question. But, I have seen no reason of state, nor has any been suggested, why the naturalized Jew should not be placed on the same footing with any other naturalized citizen; or why a *native* Jew should be cast into a lower order, than even the naturalized foreigner of any country on the globe! Is it because there is something in the nature of his race, which necessarily renders the

Jew a less valuable citizen? Then, sir, ought we to form a graduated scale for the different nations of the world, and regulate the term of their admission, or the extent of their privilege, according to the merits or demerits of their national character! And would it not, on the same principle, be necessary to establish different castes among our own citizens, and lay aside that wholesome republican respect for individual merit, which has hitherto been our guide? No, sir, such odious discrimination is practically impossible. The citizen of Jewish origin, whether naturalized or native, ought to be entitled to all the rights of citizenship that may be claimed under like circumstances by an Englishman, a Frenchman, or a Spaniard.

But, sir, is there really such inferiority in the Jewish race or character, which renders it necessary to inflict on them such a degradation? The sacred book on which we ground our faith, teaches that they are not an inferior people. Else, wherefore should they have been the chosen people of God, the favoured depositaries of the sacred law and holy prophecies? Do we forget that to them we are not only indebted for these, but even for the blessings of Christianity? Its author was a Jew, his apostles were Jews. On the contrary, there is every reason to believe, that, as a race, they are entitled to the first rank among nations. If a portion of this race was unwilling, or unable to believe, we are told



it was permitted by Providence for purposes greater than we can comprehend. That their descendants, eighteen hundred years afterwards, should still persevere in the belief, or unbelief, of their forefathers, we are taught to look upon as a *miracle*; but we are also taught, that the same people will believe at last, and be restored to divine favour. Their nature then has not changed, although they labour under the displeasure of our common Father. That displeasure has scattered them over the world, and has exposed them to the persecutions of the wicked—persecutions, which, it must be confessed, according to the natural tendency of things, has had, in many countries, a most unhappy influence on their character. And, let me ask, is it to be wondered at, when surrounded by the most indignant enemies, their remorseless oppressors and persecutors, that they should feel indignation and resentment? Can we expect them to exhibit elevation of character, when a mark of opprobrium has been set upon them? Can we expect to see them display universal benevolence, when they are universally scorned? Can we expect to see them engaged in sober and industrious callings, when they are forbidden to be owners of the soil, or to exercise the common mechanic arts? Can we expect them to love their Gentile neighbours and brethren, when the very name is used as a by-word---when those neighbours and brethren teach their children to scoff even at their mis-



fortunes? If the Jew be such as his enemies represent him, it is their cruelties which have made him so. That this should be, I own, is the will of heaven; but before we take part in the persecution, let us solemnly pause, and recollect, that when God afflicts his children, THE INSTRUMENTS OF HIS WRATH ARE OFTEN HIS ENEMIES ALSO.

If there is nothing in the Jewish race, is there any thing in the Jewish religious doctrines, which necessarily disqualifies the Jew from discharging the duties, and fulfilling all the obligations of a citizen of Maryland? Sir, I do boldly maintain that there is not. If there be such, I call upon the gentlemen who have risen in opposition to the bill, to point it out. I should be the last to deny, that a belief in a future state of rewards and punishments, is the sheet-anchor of all civilized governments. And has the Jew no religion to enforce the performance of his moral duties, by sanctions beyond the grave? Yes, sir, he has. He worships the same God that we do---the God of Abraham, Isaac, and Jacob. The same law which was given to him, we profess to obey---and excepting that law, which was from the beginning imprinted on the conscience by our Creator, for thousands of years, the chosen people had no other. We are taught, *as Christians*, that the whole of the sacred volume must stand or fall together, and consequently that the religion of the Jew, so far as he believes, is a part of ours. We

are, however, taught that the author of our religion came not to govern the earth, but to unbar for us the gates of heaven. Can the Jew be said to have no religion which renders him accountable hereafter? He has. In his youth he is taught the same precepts for the government of his life that we are; in his infancy he learns to lisp the same prayer of universal benevolence, and morality, that the Christian mother teaches her child. He believes in the coming of a Messiah, with great power and glory, to judge the earth; this is our belief also. On that day we shall all be Christians. The ultimate conversion of the Jews is a part of our belief: why then this intolerant and persecuting spirit? Are we apprehensive that there will be a scarcity of persecutors? Are we apprehensive, that in ceasing to be persecuted, and therefore ceasing to be a peculiar people, the Jews will no longer be the living miracle, now exhibited to our eyes? Then the will of heaven shall have been fulfilled. It is with reluctance, sir, I have pursued this train of thought. It is my wish to steer clear of any thing like theological discussion, and to consider the present question as purely political.

Were it necessary for the support of this bill, I would undertake to vindicate the Jewish character from its commonly imputed vices and defects. But the question before the house, has nothing to do with these considerations. I will ask those Chris-

tians who now hear me, candidly and dispassionately to examine their own minds, and to say how much of their opinions on the subject of the Jewish character, is the offspring of prejudice? Most of us have been taught from earliest infancy to look upon them as a depraved and wicked people. The books put into our hands, and even the immortal Shakespeare himself, have contributed to fix in our minds this unchristian hatred to a portion of our fellow men. It is true, we have witnessed some honourable exceptions; a modern character, (I rejoice to say it for the honour of Christendom,) ventured to be their advocate, and what is more, with success. We have seen, sir, that, in the same country, in proportion as science and civilization have advanced, the condition of the Jew has improved, while his moral character has as uniformly risen to the level of that condition. Will any one seriously compare the Jews of England, of the present day, with the same people a few centuries ago, when degraded and oppressed by the British kings? Will the Jews of Portugal or Turkey, bear a comparison with those of the more liberal governments of Europe? To come nearer home, I will ask whether the American Jew is distinguished by those characteristics so invidiously ascribed to his race, by its enemies? Sir, I have had the honour of being acquainted with a number of American Jews, and do not hesitate to say, that I have found at least an equal proportion

of estimable individuals, to that which might be expected in any other class of men. None, sir, appeared to me, more zealously attached to the interests and happiness of our common country; the more so, as it is the only one on earth, they can call by that endearing name. None have more gallantly espoused its cause, both in the late and revolutionary war; none feel a livelier sense of gratitude and affection for the mild and liberal institutions of this country, which not only allow them, publicly and freely, the enjoyment and exercise of their religion, but also, with the exception of the state of Maryland, have done away all those odious civil and political discriminations, by which they are elsewhere thrown into an inferior and degraded caste. In the city which I have the honour to represent, there are Jewish families, which, in point of estimation and worth, stand in the first rank of respectability—who are scarcely remarked as differing from their Christian brethren in their religious tenets, and whose children are educated in the same schools with our youth, AND, LIKE THEM, GLORY IN BEING AMERICANS AND FREEMEN. Have we hitherto had any cause to repent of our liberality—rather of our justice? Sir, I abhor intolerance, *whether it be political or religious*; and yet, I can scarcely regard religious *tolerance* as a virtue. What! has weak and erring man, a right to give *permission* to his fellow mortal, to offer his adorations to the

Supreme Being, after his own manner? Did I not feel myself somehow restrained from pursuing this subject, I would endeavour to demonstrate, that the idea of such a permission, or toleration, is no better than impiety. But I content myself, with calling your attention to what has been the effect, in this country, at least, of leaving religion to be taught from the pulpit, or to be instilled by early education. Is there, let me ask, less genuine Christianity in America than in any other Christian country? For, if the interference of government be necessary to uphold it, such ought to be the natural consequence. Certainly we are not disposed to confess an inferiority in this particular---Sir, I believe there is MORE. And I am well convinced, that if the success of true religion, were the only end in view, other nations would follow our example of universal toleration. I believe, that in no countries, are there more atheists and deists, than in those where but one mode of worship is sanctioned, or permitted. In my opinion, it is the natural inclination of man, to seek support and refuge in religious feelings; and if he find a religion which his judgment approves, or to which his affections attach him, he will cling to it, as his brightest hope. The man who cannot subscribe to all the doctrines and discipline of catholicism, may still be a protestant---the protestant may be a churchman, a presbyterian, a friend, or a methodist. But the inquisition allows



him no choice ; he must either embrace that which is tendered him, or be nothing. No, sir, it does not enter into the duties of this body, to guard and preserve the religious faith of Maryland, from schism, and innovation ; otherwise, we have been grossly remiss in the performance of that duty. I do not recollect a single statute, or resolution, on the records of this house, for this purpose. Sir, the propagation of error, has never been prevented by force ; but force has sometimes given permanence, to what would otherwise have been ephemeral.

Were we about to attempt the conversion of the Jews to Christianity, the true mode, in my opinion, would be, to treat them with kindness, and to allow them a full participation of political and social rights. When men are proscribed for their opinions, those opinions become dear to them ; like the traveller in the storm, they draw the mantle closer about them, but on the return of the warm and genial sun, they cast it carelessly away.

Some reasons have been urged against the passage of this bill, whose force, I must own, I can scarcely comprehend. We are told, that it will hold out inducements to the Jews, to migrate to this country from abroad ? Without stopping to inquire into the nature of this supposed evil, I will simply reply, that the inducement already exists. If it can seriously be supposed, that the *prospect of obtaining offices* would invite the Jews to this country, in such

numbers as to endanger its safety, I would ask whether that invitation has not been already given by the constitution of the union, as well as those of the neighbouring states? On the other hand, it has been objected, that the number of Jews is too inconsiderable to call for an alteration of the constitution on their account. I shall not attempt to show how far these two propositions can be reconciled; but, sir, in relation to the latter, I entertain a very different opinion. The nature of the injustice is not changed by the greatness or smallness of the number of those who suffer. If but ONE American citizen be deprived of the LEAST of his just constitutional rights, or feel the hand of tyranny and oppression, and it be in our power to afford him redress, it is our sacred duty to interpose. If we leave him to his fate, we break down the barrier which gives security to ourselves, and by indifference to the violation of his rights, we invite the tyrant to trample on our own.

It has been asserted and repeated, that there is no intolerance in withholding from the Jews the common privileges of citizenship. It is asked, are they not protected in the free exercise of their religion? Are they not permitted to hold property, and to pursue the occupations most agreeable to them, with one only exception, that of the legal profession, which requires them to sign the test? Are they not permitted to vote at elections, and

thus to have a voice in the formation of the laws? I own, sir, that this is true; but why allow them even these privileges? It is the principle against which I contend, and not the extent of the injustice. Suppose the Jews were allowed one privilege *less* than they at present enjoy; for instance, the right to vote at elections, (and now, for the first time, it was sought to be given them,) would not the same arguments be urged in opposition to that just request, that we have heard this day, against placing them entirely on a footing with their fellow citizens? To go further, let us suppose them on a footing with the Jews of England, and an attempt were now made to extend to them some trivial privilege of citizenship, would not the same arguments still be urged against it? Pursuing this train of thought, to what result would it conduct us? Sir, it would end in consigning the Jews to the dungeons of the inquisition. The self-same arguments that have been arrayed this day against the passage of the bill on your table, have been heard from the lips of those who were engaged in preparing the rack, the chains, the fires, for the persecuted Jew. Such arguments are unworthy of free Americans, and ought to be abhorred, if for no other reason, that they are the constant theme of such as perpetrate the most horrid crimes in the name of religion—of those, to use the words of a celebrated orator, *whose banner*

*is stolen from the altar of God, and whose forces are congregated from the abysses of hell.*

Even the illiberality of other nations, should afford us a lesson. In countries which groan under the tyranny of the inquisition, the stranger who professes *Protestant* Christianity, is held in no higher estimation than the Jew—is even designated by that very name; and there is but little doubt, that his only safety depends on the protecting arm of his country; without this, he would be treated with the same cruelty and opprobrium, as the outcast Jew! As far as epithets will go, the *heretic* is not more respected than his unfortunate companion. This is not the spirit of Christianity. If man errs in his belief, is there no judge? There is; but that judge has emphatically declared to man, “judge not, lest you be judged.” Far be it from me, to express the remotest disrespect, of any Christian denomination. I speak of what I conceive to be the abuses of that admirable system; and those abuses have rarely failed to be practised, whenever there is an exclusive religion maintained by coercion of any kind. If we look abroad, and even glance around on our own country, we shall find, that the practice of persecution, and the spirit of intolerance, are not the inseparable attendants on Catholicism; nor does history prove *that American Protestants cannot be intolerant.*

It has been said, and I own I heard it with some



surprise, that the evil proposed to be remedied by this bill, is of a nature purely abstract, and accompanied by no real and serious grievance. It is true, sir, that there has been no deputation from the people called Jews, to solicit in person, or to make known to you their feelings and wishes in relation to this matter. Far from this circumstance being construed to their disadvantage, there is a delicacy in thus declining to weary you with importunity, which deserves to be admired. But can any one for a moment suppose, that any native American citizen, whatever may be his religion, is insensible to the privation of liberties and privileges, so highly prized by all his fellow-citizens? Is it possible for him to be insensible to the indignity of being set apart, as belonging to a caste unworthy of a full participation of civil and political rights? No, sir, although the Jews are silent on this occasion, they are not insensible. I will say more—they look to the decision of this house with the deepest interest, as to one which may restore them to that rank under the spirit of the bill of rights, and the constitution, which they have never forfeited, and to which they have a just claim, in reason and sound policy, as well as by the paramount principle of the federal compact. It is but a few days since I read in one of the newspapers of Baltimore, an account of a public examination, at the principal seminary of learning at that place. To the son of a Jew, a youth but



little turned of twelve years of age, was awarded the *first prize in every branch of education*; and to crown all, he was declared to have surpassed his companions in good conduct and morality, as he had in the superior endowments of his mind. I own, I feel a mortification, when I reflect, that the talents, learning, and meritorious deportment of this youth, can lead him to none of the offices or honours of his native state. That he cannot apply himself to the study of the law, or aspire to a rank in the volunteer company in which he may have signalized his valour. Is it possible, let me ask, for this youth, or his parents, to feel no mortification at a distinction so invidious? Those enlightened foreigners, who have been in the habit of praising the liberality of our institutions, will with difficulty give credit to the fact I have related. The feeling I have for the honour of my country, for the character of Maryland, is a much more powerful motive with me, in voting for the bill, than a sense of what is due to the Jews, however strong that sense may be. I feel mortified that any one can say, that the government of a community of which I am a member, possesses the power or inclination to exercise a control over opinion, whether that opinion be political or religious. Nothing has so great a tendency to elevate our character among the wise men of foreign countries, as our supposed exemption from all intolerance. Our neighbouring states deserve this praise—and so

inseparably did I suppose the principle of toleration connected with our political institutions, that when Maryland was first mentioned to me as an exception, it excited my astonishment. I hope for the honour of the United States, and of the state of Maryland, the bill on your table will pass.

I call upon any gentleman to produce the dictum or opinion, of an American statesman of note or celebrity, in favour of a religious test for political purposes; or *the example of any state of the union, which withholds from American citizens of Jewish origin, all eligibility to office.* In one of the states, (Massachusetts,) we find something like a test, but confined to a few of the higher offices; but I entertain no doubt that it will be done away in that enlightened republic, whenever it shall be proposed. From every state constitution formed since that of the United States, the test has been rejected---and some of them have gone so far as to say that none shall ever be required. In the state of North Carolina, there is a memorable instance on record, of an attempt to expel Mr. Henry, a Jew, from the legislative body, of which he had been elected a member. The speech delivered on that occasion I hold in my hand; it is published in a collection, called the American Orator; a book given to your children at school, and containing those republican truths, you wish to see earliest implanted in their minds. I will take the liberty

of reading some passages from it. [Here Mr. B. read a part of the speech.] Mr. Henry prevailed, and it is a part of our education, as Americans, to love and cherish the sentiments uttered by him on that occasion.

In turning over the pages of the same book, I find at least ten speeches on the subject of religious toleration, from the most celebrated orators of Great Britain. The names of Chatham, Fox, Sheridan, Grattan, Erskine, are here recorded as the champions of universal toleration. As the generous advocates of the Catholic and the dissenter, they speak "in words that burn and thoughts that breathe"---they denounce with the irresistible energy of truth, the unnatural union of church and state, and the interference of earthly power in matters of religion. Why put this book into the hands of your children, if it be not to instil into their minds, the sentiments that American citizens ought to entertain? And where is the distinction between the struggle of the Catholic and the dissenter, for the liberty of conscience in England, in which we all sympathize, and the effort now making in favour of the persecuted Jews? Is not the proscription equally unjustifiable? Do they not both claim the same right, that of offering their worship to the Deity, free from all animadversion of the temporal government? The case is the same—it cannot be distinguished.

Some remarks have fallen from gentlemen, that,

in my mind, go further to discredit the opposition to the bill than any thing that can be urged by its supporters. It was, indeed, with surprise, I heard it seriously asserted, that if this bill passed, we should shortly have Chinese or Turks in office, that we shall have the processions of Juggernaut crushing to death its victims in our high-ways! I cannot suppose that gentlemen were serious in these ideas. I contend for the freedom of *thinking*, and not for the liberty of *acting*, as we may think proper; and if Juggernaut should happen to come among us, and attempt to disturb the peace of our towns, I should be the first to hand him over to the constable. So long as my actions neither contravene the laws, or disturb my neighbour, no one has a right to molest me. This is the right I desire as an American citizen; and I proclaim it persecution when any one forcibly interrupts the free enjoyment of my opinion in matters of religion, politics or science, provided they lead me to do no act which insults my neighbour, or violates the laws of the land. Where the matter is a mere difference of opinion, I HOLD MY RIGHT UNQUESTIONABLE, TO DIFFER FROM ANY OTHER MAN, OR FROM ALL MANKIND, BE THE SUBJECT WHAT IT MAY.

Is any gentleman really afraid that Chinese or Turks may be elected to offices of honour or profit in this state? I see no reason why they should not be, if the people think them deserving of their con-

fidence. But is the danger really so great, as to require them to be excluded by constitutional provision? I never saw but two Chinese in the United States, and they were the servants of an eminent merchant in New York, and one Turk, who exhibited as a juggler. But the irresponsible *infidel* may be allowed to hold office, if the test be repealed! If the term infidel be applied to those individuals among us who deny the sacred scriptures altogether, I assert *that no religious test* can have any effect upon them. As to them, the only test is a knowledge of their opinions, character, and habits of life, among their fellow-citizens. The religious test places it in their power to acquit or condemn themselves as they may think proper; there can, therefore, be no greater absurdity than to subject them to such a trial. Nay, its effects would be worse; for suppose the case of one whose misfortune it might be to disbelieve, yet of known honour and integrity, perhaps unconsciously a *practical Christian*, and such, it must be admitted, there are—such a man, abhorring a falsehood, will, of course, decline the test; and if any one should deny this to be an evil, I might not be disposed to dispute the point—yet, is there any one who will not concur with me in disapproving, in the strongest terms, the possibility of the *real infidel*, the man who has neither regard to honour or religion, deriving every benefit of office, from his willingness to take up a



convenient mask? Will *he* hesitate to subscribe to the test, if any thing is to be obtained by it? Such is the character of this test, which excludes the man of truth and integrity, and admits the unprincipled knave! If a witness swear falsely as to *fact*, his testimony can be disproved by other witnesses; but, in this instance, it is only OMNISCIENCE which can convict him. If accused of having acted falsely, or in contradiction to sentiments expressed on other occasions—he can say, that conviction has reached his mind, or that it has been shaken; and who is to determine the truth or falsehood of that which is necessarily confined to his own breast? The test I consider as utterly useless for any temporal purpose. If the term infidel be applied to the unconverted aborigines of this country, I must again reply, that there is not the remotest probability of the test acting upon them in any way. But, sir, the bill on the table is confined to the Jews, and is intended specifically for their benefit; it is not intended for the infidel, Turk, or Chinese; and surely the Jewish religion is not to be placed on a footing with barbarous superstitions. It has been impressed on my mind, that the Jewish religion is divine; that we should believe in the books of the Old Testament as well as they, although we believe also in those of the New. We concur in the belief of that which constitutes the base and foundation of Christianity—take away that foundation, and where is the

superstructure? And why should we be displeased with them, because they think proper to continue their abode in the darker apartments below, while we have ascended to the higher parts of the dwelling, and breathe a freer air, and are surrounded by a clearer light? The provisions of the bill, I confess, are not exactly what I would wish them to be---they do not go far enough---instead of providing merely for the ease of the Jews, I could wish the test entirely expunged from the constitution.

I am sensible that I have trespassed much on the patience of this house, on a subject in which the reputation of this state is more deeply involved than its interests; it is one which seems to be remote from the ordinary business of legislation; but I feel for the character of those whom I represent, as I feel for my own; and the character of justice, and a proper regard for the rights of my fellow citizens, is far dearer to me than any consideration of interest; and I see no reason why the state in its represented assemblage, should not be actuated by those motives, which are regarded as generous, and noble, when they influence individual actions.

There is but one remaining objection to the passage of the bill, and this I will endeavour also to meet, and yet, it is not without reluctance. It has been repeated, that the passage of the bill, is incompatible with the respect we owe to the Christian religion; that this is a *Christian land*—that the

Christian religion ought here to be, at least, legally avowed, and acknowledged; and that the respect which is due to that institution, may be weakened by abolishing the test. Sir, I can see no disrespect, offered to any system of religion, where the government simply declares, that every man may enjoy his own, provided he discharges his social duties; and that the only support of religion, should be derived from the zeal, affection and faith of those who profess it. Sir, I do firmly believe that it is an insult to the Christian religion, to suppose, that it needs the temporal arm for its support. It has flourished in despite of temporal power---by the interference of temporal power in its behalf, has its progress ever been retarded, or its principles perverted.

But, we are told, that this is a *Christian land*, and that we are Christians! I rejoice to hear it, and I hope we will prove ourselves worthy of the name, by acting on this, and on every other occasion, with Christian spirit. The great author of that sublime religion, teaches us charity and forbearance, to the errors and failings of our fellow men. To his followers, he promised no *worldly benefits*, but crowns of glory in heaven; for he emphatically declared, that *his kingdom was not of this world*. Far from inculcating unkindness and resentment, to those of the Jews who did not believe in him, he even forgave those among them,

who were his persecutors, and enemies. Do we find any injunction bequeathed to his followers, to pursue those enemies with vengeance? No---his last words was a prayer for their forgiveness; and shall we dare to punish where he has been pleased to forgive?

But this is a *Christian land!* And let me inquire of the page of history, by what means it became so? Was it through the instrumentality of peace and good will to our fellow men? Perhaps we may say with a clear conscience, that we violated no principle of justice, or Christianity, in our dealings with the poor heathen, whom we found in possession of the soil. But if there is a beam in our own eye, at least we can see the mote in the eye of our Christian brethren of the south. Let us cast a glance towards the bloody Christian conquests of Cortes and Pizarro---they are now *Christian lands*, and by what means did they become so? I can fancy to myself the wretched Guatimozin, stretched on burning coals, his only crime that of *being suspected of unrevealed treasures*, and I hear him rebuke his less patient companion in misery, by the simple, but heroic question, *Am I on a bed of roses?* Who was the Christian on that occasion? No, sir, the soil we inhabit yields its fruit to the just and to the unjust; the sun which gives us life, sheds his glorious beams impartially on all. But the great majority of the dwellers in this land are Christians;

therefore is it a *Christian land*! For the same reason, it might be a catholic, episcopal, or presbyterian land. Our political compacts are not entered into as brethren of the Christian faith---but as men, as members of a civilized society. In looking back to our struggle for independence, I find that we engaged in that bloody conflict, for the RIGHTS OF MAN, and not for the purpose of enforcing or defending any particular religious creed. If the accidental circumstance, of our being for the greater part Christians, could justify us in proscribing other religions, the same reason would justify any one of the sects of Christianity, in persecuting the rest. But, sir, all persecution for the sake of opinion, is tyranny---and the first speck of it that may appear, should be eradicated, as the commencement of a deadly gangrene, whose ultimate tendency, is, to convert the body politic, into a corrupt and putrid mass.

Mr. Speaker, if I were required to assign a reason, why, in the course of events, it was permitted by Providence, that this continent should have become known to Europe, the first, and most striking, according to my understanding, would be, *that it was the will of heaven to open here, AN ASYLUM TO THE PERSECUTED OF EVERY NATION!* We are placed here to officiate in that magnificent temple; to us is assigned the noble task of stretching forth the hand of charity, to all those unfortunate men,



whom the political tempests of the world may have cast upon our shores. We, as Americans, should feel a generous exultation, when we behold even the JEW, to whom the rest of the world is dark and cheerless, overjoyed to find a HOME in this *Christian land*, in finding here, one sunny spot at last! In perusing an elegant pamphlet, from the pen of an American Jew, and lately published in New York, I felt proud to find myself the citizen of a republic, whose benevolent conduct deserved such an eulogium. “Let us turn, then,” says he, “from Europe, and her errors of opinion, on points of faith, to contemplate a more noble prospect—OUR COUNTRY, the bright example of universal tolerance, of liberality, true religion, and good faith. In the formation and arrangement of our civil code, the sages and patriots, whose collected wisdom adopted them, closed the doors upon that great evil, which has shaken the world to its centre. They proclaimed freedom of conscience, and left the errors of the heart to be judged at that tribunal, whose rights should never have been usurped. Here no inquiry of privileges, no asperity of opinion, no invidious distinctions, exist; dignity is blended with equality; justice administered impartially; merit alone has a fixed value, and each man is stimulated by the same laudable ambition—an ambition of doing his duty, and meriting the good will of his fellow men. Until the Jews can recover their ancient

rights and dominions, and take their rank among the governments of the earth, THIS IS THEIR CHOSEN COUNTRY; here they can rest with the persecuted from every clime, secure in their persons and property, protected from tyranny and oppression, and participating of equal rights and immunities."

Sir, I have done. I trust I have satisfied every member of this house, of the justice of the positions I have undertaken to maintain. I hope we shall no longer persevere in withholding from the Jews, privileges to which they are constitutionally entitled, and which are not controlled by any paramount reason of state policy, arising from a regard to our own safety and welfare. We surely run into no danger, by following the example of the enlightened framers of the federal compact, with the great WASHINGTON at their head. Let us boldly, then, adopt that course, the only one which can steer clear of error and inconsistency, and enable us to square our conduct by the immutable rules of justice. Let us sever at once, and for ever, the unnatural union between force and opinion—between temporal power and religious faith. Let us GIVE UNTO CESAR, THOSE THINGS THAT ARE CESAR'S, AND UNTO GOD, THOSE THINGS THAT ARE GOD'S.

# **SPEECH**

OF

**COL. J. W. D. WORTHINGTON,**

DELIVERED

IN THE HOUSE OF DELEGATES OF MARYLAND, 1824,

ON THE

**JEW BILL.**

---

MR. SPEAKER,

On a subject of this high importance, I feel a deep solicitude. It seizes on the feelings and anxiety of the old and the young, suspends the light pursuits of the gay and the thoughtful, become doubly attentive on this momentous question. See what an extraordinary concourse from all quarters, of all ages and sexes, this discussion to-day has attracted to your house!—every lobby, aisle and avenue, crowded almost to suffocation!

This is a spectacle which no other nation on the earth, on an occasion like this, (the dispassionate discussion of a political question, though not entirely abstract, yet least complained of by those who both theoretically and practically are affected by it)

can exhibit, unless a discoloured and inflamed resemblance to it may be occasionally found amongst some of the high-minded nobles and honest yeomanry of the kingdom of Great Britain. No where else on this hapless political sphere, than within the limits of our union, need the patriot or philanthropist look for the realization of the scene now before our eyes!

I shall treat this subject with great gravity, and endeavour, by matters of fact, unquestionable calculations, and plain but honest reasoning, to convince this honourable house of their duty and necessity in passing this *Confirmatory Act*. I shall deal in no ingenious hypothesis, no wild speculations! And though "bright-eyed fancy hover o'er," I shall restrain even a look towards these flowery fields, where, in the fairy morning of life, it so much delighted me to roam.

I shall divide my subject into two parts, by laying down two propositions:

1st. This disqualification is against the spirit of our constitution, and the letter of that of the United States, and against the genius and character of the governments of our state and union, and the age in which we live.

2nd. It is against the policy of our country.

Sir,—The whole scope of the declaration of rights, and the constitution of Maryland, go to promulgate and establish our unrestrained and liberal

form of government. It exists only in this character, and breathes only this spirit—so that this religious restriction seems to be an alien and disjointed member of that compact---an intruder, an interpolator. Upon a fair and liberal construction, even in ordinary concerns, this repugnant condition would be controlled and merged in the clear and unequivocal intention of the whole instrument. It is superfluous to refer to any particular clause or section. It must be recollected too, that this basis of our state rights was framed at so early a period as August, '76, when something of monarchical and colonial prejudice, and narrow-mindedness, still hung about us---passing upwards, from dependence to freedom ! So, the soul, as it is quitting its earthly tenement, may have some mortal particles hanging about it, till aspiring aloft, those grosser elements fall to the ground as she reaches her pure and incorruptible abode !

Not so with the constitution of the union---that was framed many years after, when we had passed from colonial misgovernment through the fiery ordeal of a long revolutionary war---had reposed after its termination under a *confederation*, and then, in a manner defecated and tranquil ; the sacred charter, the constitution of the United States, was elaborated into being. There, we have a right to look for, and there we see, this *wily enemy to equal rights* could find no habitation nor resting place ;



the gates and the walls were too well watched, and his crippled wing could not now lift him from the earth to soar above those impassable barriers. *No religious test* stands in high relief over the very portals of the temple, and intolerance falls broken and prostrate at the sight! This was no hasty principle engrafted in the constitution---it grew out of the *plighted faith* of the patriots and heroes of the revolution, and the wishes of the states after the dissolution of the confederacy. I will, with very few comments, read from this old and venerable edition of the proceedings of the Revolutionary Congress, express authorities to substantiate my assertion.

#### JOURNALS OF CONGRESS.

Address to the inhabitants of Quebec—vol. i. p. 60.

“We are too well acquainted with the liberality of sentiment distinguishing your nation, to imagine that difference of religion will prejudice you against a hearty amity with us. You know that the transcendent nature of freedom elevates those who unite in her cause above all such low-minded infirmities,” &c.

Address to the oppressed inhabitants of Canada—vol. i. p. 101.

“Nay, the enjoyment of your very religion, in the present system, depends on a legislature in which you have no share, and over which you have no control,” &c. &c.

To encourage foreigners to quit the British service—vol. ii. p. 292.

“Whereas, it has been the wise policy of these states to extend the protection of their laws to all those who set-

tle among them, of whatever nation or religion they may be, and to admit them to a participation of the benefits of civil and religious freedom: and the benevolence of this practice, as well as its salutary effects, have rendered it worthy of being continued in future times," &c.

New Jersey representation on the articles of confederation, vol. iv. p. 269.

"In the fifth article, where, among other things, the qualifications of the delegates from the several states are described, there is no mention of any oath, test, or declaration, to be taken or made by them, previous to their admission to seats in congress. It is indeed to be presumed, the respective states will be careful that the delegates they send to assist in managing the general interests of the union, take the oaths to the government from which they derive their authority;"—further---"we are of opinion, that some test or obligation is necessary."

The Constitution, as passed Sept. 28th, 1787—vol. XII. p. 107.

"No Religious Test shall ever be required to any office or public trust under the United States."

May 12th, 1788. Vol. XII. p. 171. The Convention of South Carolina wished the following amendment, but it was refused.

"Resolved, that the 3d Sec. of the 6th Article ought to be amended, by inserting the word "*other*," between the words "*no*" and "*religious*."

Vol. XIII. p. 172. The New Hampshire Convention remonstrated, that

"Congress shall make no laws touching religion, or to infringe the rights of conscience."

Convention of Virginia—vol. XIII. p. 176. On 27th June, 1788, pronounced that

"All men have an equal, unalienable, and natural right

to free exercise of religion, according to the dictates of conscience; and that no particular religious sect or society ought to be favoured or established by law in preference to others."

Vol. XIII. p. 178. Lastly, the Convention of New York declared,

"That the people have an equal, natural, and unalienable right, freely and peaceably to exercise their religion, according to the dictates of conscience; and that no religious sect or society ought to be *favoured*, or established by law, in preference to others."

Thus, sir, we see that toleration—that no *religious test*, was the very corner-stone laid by our illustrious progenitors, at the foundation of the temple of liberty. Even the highly interesting state of New Jersey, whose bosom was not yet cicatrized, bearing the hallowed wounds of Monmouth, and of Trenton, though she gravely asked for it, could not obtain a *test*. Nor could South Carolina, with all her just weight of character—fresh in the renown of her statesmen, and the brilliancy of her achievements, obtain the insertion of the little word "*other*;" because, that would have implied, that there was *some kind* of test, and the framers of the constitution would not suffer any thing in it, even by implication, to *smack* of such a conclusion. Suppose, out of the 213 representatives now in congress, one "whose head no hellebore could cure," were to rise in his place, and move to amend the constitution, by inserting a religious test; I am cer-

tain, he would not get a solitary member to second him. His name might descend to posterity, but it would be like Arostratus, who fired the temple at Ephesus; and if, in August, '76, a test had not been foisted into the constitution of Maryland, any one who would attempt it, at this period, would share the same fate. If such a thing could not be even *dreamt* of then, why should it be suffered to exist? Like the unprofitable fig-tree, it bears no fruit, "cut it down, why cumbereth it the ground?" We have now twenty-four states, eleven of which have been added since the revolution; in every one of which, a *religious test* has been expressly excluded; what can be a stronger proof of the genius and spirit of the age in which we live? Even in the old states, but two or three retain a test—in the others, it is expressly excluded. A person was, some year or so past, elected in the North Carolina legislature; she has a *strict test*—his seat was attempted to be vacated; it was determined that the state test was repugnant to the constitution of the United States, *and he retained his seat!*—he was a Jew! What does this show, but that an isolated and odious disability like this, is swept away before the age.

Yet, a writer under the signature of Orthodox, a large and well written paper, as to style and sophistry, which has been officiously, nay, obtrusively laid on the tables of the members of this house, and which, I presume, comes from high and opulent

authority; perhaps from a bishop, who was bred a lawyer, or from the private pen of some modern Gil Blas, and some sage writer of Homilies. But from the preponderance of astutia in this production, I think our modern wag will not tell his scribbling reverence, that his faculties begin to fail—but I will tell him, that he has misstated and misquoted the constitutions and the facts, &c.

To maintain the propriety of our still retaining the test, he says—"In several of the states, the *Christian religion* is expressly recognised and established. To make this assertion more effectual, he puts an asterisk (\*) to it; and immediately under "Orthodox," at the bottom of the fifth column of his "*Remarks on the proposed alteration of the Constitution of Maryland, in relation to the Test required for those who hold offices,*" he enumerates the states which have a test, or provisions tantamount to it, in their several constitutions.

1st.—Massachusetts. She has not a full test, but very modified and restricted. Next, Jersey—I think he is wrong, from the view I have taken of her constitution; but not having the original charter, to which it refers, I cannot be positive. 3d.—Pennsylvania. Here he shows the cloven foot. He thought, perhaps, the sceptical might take the trouble to look up the first, and finding him correct, would take the balance on faith—not so with me; I will sift him to the last grain. In the teeth of his



assertion, this is the constitution of Pennsylvania:—

*Art. 9, Sec. 4. “No person who acknowledges the being of a God, and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust, or profit, under this commonwealth.”*—Would this prevent a Jew, or a Mahomedan, or any other religious person under the canopy of heaven?—I suspect not. The 3d, or antecedent article, is equally liberal. 4th, Delaware---this hits his reverence plump on the head. The 1st Art. and 2nd Sec. says:---“*No religious test shall be required as a qualification to any office or public trust, under this state.*” Now, on my honour, if I were certain “Orthodox” was a layman, I would say he told a palpable falsehood; but fearing, lest he may be something amphibious, “some bishop-lawyer, or some lawyer-bishop,” I will only prove he has told it. 5th, Maryland---Ah! you are too right there---“it is the very head and front of her offending.” 6th, North Carolina---right again. 7th, and last, South Carolina---as wrong as if he had burnt his coat or cassock. How reads the book?

Article 4.---“*All persons who shall be chosen or appointed to any office of profit or trust, before entering on the execution thereof, shall take the following oath: ‘I do swear, (or affirm,) that I am duly qualified, according to the constitution of this state, to exercise the office to which I have been ap-*

*pointed, and will, to the best of my abilities, discharge the duties thereof, and preserve, protect, and defend the constitution of this state, and of the United States.'"* Not one word in the constitution about recognising or establishing any particular religion. How unworthy such deception, to be attempted against the people, and doubly so, when offered under the solemn sanction of religious truth! He speaks not one word of all the new states and their constitutions; and yet, what a strong instance is the state of Louisiana---though composed of French and Spaniards, in large proportion, who are as tenacious of their religion as any people on earth, yet they require no test; nor does the present territorial government of Florida, though in its erysalis as to state sovereignty, and just disincumbered from the arms of the "Beloved Ferdinand."

And now for a few of this writer's false facts. The address is too long, and too full of inaccuracies, to be taken up regularly---a great deal of historical and theological detail---discussion of the general and state sovereignty, &c. &c., all pretty wide of the main question. But at the head of the third column, he says:---"This provision (that is, the test,) is now the stumbling-block, and the cause of great clamour, not among the Jews, it must be admitted." No, sir, the Jews have not made a "great clamour," because that would be the means of injuring both their cause and their standing in our country. But

directly contrary to the inference of this writer, they have gravely and decorously, feelingly and ably presented, by my hands, a memorial to this honourable body, to relieve them from this test. He goes on---“The truth appears to be, that the most zealous advocates of the proposed change, care nothing about the Jews;”---talks about pagan idolaters, heathens, infidels, &c. &c. I am not going to discuss either metaphysical or religious subjects, or to advocate this creed, and attack that---I am speaking on a subject of civil policy. If, in my investigation, I shall sometimes be obliged to touch on things and opinions of a sacred and holy character, I shall endeavour to do it with all due reverence and solemnity.

Having, I hope, fully discussed and proved beyond a doubt, my first proposition, I will proceed to the consideration of my second, under which, those parts of “Orthodox” which I have last read, will be noticed and refuted. I should be deficient in courtesy, if I were not to notice him, after this solemn invocation just before his parting benediction. “*To our Christian brethren of the state, we appeal for exertion in this struggle. To the members of the legislature, in an especial manner, we direct our hopes. We invite them to pause, as on a tremendous precipice.*”---“My dukedom to a dernier,” this writer would relish an established religion, and a union between church and state!

However, I will proceed *in* the plan I have laid down.

It is certainly not only the policy of the union, but of each particular state, to encourage the emigration of moral, enterprising, and affluent citizens to their shores. This assertion is now received as a political axiom.---The state, which creates or retains disqualifications, on any description of persons, will throw them into other states which have not such disqualifications, and thereby injure herself. Should this honourable house negative this bill, who could blame those gentlemen of the Hebrew church, who have signed the memorial before you, from quitting your state with their families, their connexions, and wealth, and choosing some other state, where they enjoy equal rights and favour, with all its citizens. Some persons may think that we should lose but little, either in character, wealth, or numbers; but I assure you, I have a document here, which confutes such a conclusion. Before I left Baltimore, I wrote on a small scrip of paper some half dozen queries, and requested Solomon Etting, Esq. to have them faithfully and truly answered, and transmit them to me. He did so, and enclosed a copy of them for general Winder, of the senate. This is Mr. Etting's original statement, which I will read through as it is written.

Solomon Etting's Answers to Col. Worthington's Queries.

Question 1st.—The number of Jews in the state of Maryland?

Answer—Supposed, at least, *one hundred and fifty*.

Ques. 2nd.—The wealth of the Jews in the state of Maryland?

Ans.—General wealth difficult to ascertain; among a few heads of families, we may estimate *half a million of dollars*.

Ques. 3d.—The number of Jews in the United States?

Ans.—At least estimate, six thousand.

Ques. 4th.—The wealth of the Jews in the United States?

Ans.—This is equally difficult to ascertain with question 2nd. Among the *heads of families*, in the principal cities, we may fairly estimate the wealth at *ten millions of dollars*.

Ques. 5th.—What offices have been held, or are now held, by members of the profession?

Ans.—To enumerate these, in detail, would be extremely tedious and difficult; we will mention a few within immediate recollection.

Solomon Bush, colonel in the American revolution, a distinguished officer, and who died after the revolution, of the wounds received, or effects arising out of them.

There were many valuable members, *officers, principally*, in the revolution, from the south chiefly, who were nearly all cut off and destroyed early in the war; they were ever at their post, and always foremost in hazardous enterprises.

Reuben Etting—marshal of Maryland, appointed by Mr. Jefferson, and who continued in office until his removal from the state.

Ditto—captain of a volunteer corps, raised very early in Baltimore, long under his command, and grew so nu-



merous as to require being divided into companies, and thrown into the 5th regiment of Maryland militia.

Solomon Etting—Captain 5th regiment Maryland militia, appointed by governor Paca.

B. I. Cohen—Lieutenant in Columbian Volunteers, attached to the 5th regiment Maryland militia, appointed by Charles Ridgely, of Hampton, Esq.

It may be well here to mention, that all the above offices under the state of Maryland, were understood so to be, and were held, without subscribing to the religious test oath.

The strongest case applicable to the subject, is one at present existing, and may thus be related:—Early in the spring of the existing year, 1823, a number of spirited young men formed a volunteer corps of riflemen, known by the name of the “Marion Corps;” without any previous knowledge on his part, of even the existence of this company, they unanimously determined, and did elect Benj. I. Cohen their captain—a commission was received from Governor Stevens, but not qualified to, of course, in consequence of the existence of the *test* law; the corps were made acquainted with this fact, and a resignation on his part of the command by the captain elect—at a meeting of the corps, *called for the purpose*, it was unanimously determined *that no captain should be elected* until the fate of the bill at present before the legislature, should be decided, and the corps is, at this time, commanded by the first lieutenant. This was the corps to which was presented *the flag*, by Governor Stevens, on behalf of Mr. Cohen, as a testimony of his gratitude for their highly distinguished marks of esteem.

There are very many instances of local appointment in the different states, both in a military and civil capacity;

wherever the Israelites are numerous, or large and powerful, those of talent will be found amongst them.

M. M. Noah—Major in Pennsylvania, Consul to *Tunis* for the *American government*, and on his return to the country, appointed by the legislature of New York to the important station of Sheriff of their metropolis.

A. A. Massias—Major in the U. S. army during the late war, and retained in the service at the reduction of the army; he is now pay-master for the southern department.

U. P. Levy—Lieutenant in the navy of the United States; has repeatedly distinguished himself in the service---last commander of the U. S. schooner *Revenge*, and lately sailed for London and Paris, as bearer of despatches to the ministers of the government at those places.

There are very many midshipmen, cadets, &c. &c.

Here is another paper, which contains the names of a corps of volunteer infantry, in Charleston, S. C. in February, 1779; it was composed chiefly of *Israelites*, residing in King's street, and was commanded by Capt. Lushington, and afterwards fought under Gen. Moultrie at the battle of Beaufort.

And yet this writer, "Orthodox," wishes to make you believe, that the father of his country, the hero of the revolution, under whom those *Israelites* so gallantly fought for freedom, would be in favour of the present restriction. At the bottom of his third column, he quotes from Washington's Farewell Address, enjoining not only morality, but religion. Who doubts the correctness of those in-

junctions for a moment?—No one. Does he say a word about preferring one religion to another? No. Then it has no peculiar bearing on this question, unless it be to show, that by his not limiting it to any particular sect, he is in favour of complete non-restriction in this respect.

It is fortunate that I have in my hands, proofs that the father of his country was in favour of the political equality of the Israelites in this particular. This is enough for me; for I make this a question between the 150 Israelites in the state of Maryland, and citizens thereof, whose elegant and touching memorial has been handed in and read at your table, and this branch of the legislature. I will not be fighting for abstract principles or rights—I am speaking for 150 Jews, amongst a few of whom alone, is *one million and a half of property*, in the lands, chattels, and funds of your own state; men who, and their forefathers, have fought with Washington for the very liberty you now enjoy, and yet you refuse them a full and equal participation.

These old papers have been preserved in the family of Mr. Cohen, of Baltimore, for many years; it shows how near to the heart of that people, this subject lies; yet how noiseless and unobtrusive they have been upon it; and it evinces their veneration for the American chief who poured this balm into their wounds.

I will read them, or rather some extracts from

them, bearing on the present point. I have selected three, all to be found in the Gazette of the United States, of June, September, and December, printed at New York and Philadelphia, in 1790.

*Extracts of Addresses to General Washington.*

1st.—From the Hebrew congregation of the city of Savannah, of the 4th of June, 1790, presented by Mr. Jackson, one of the representatives of Georgia, signed by Levi Sheftal, president, in behalf of the Hebrew congregation.

“SIR:—*Your unexampled liberality, and extensive philanthropy, have dispelled that cloud of bigotry and superstition which has long, as a veil, shaded religion, unrivelled the fetters of enthusiasm, enfranchised us with all the privileges and immunities of free citizens, and initiated us into the grand mass of legislative mechanism.*”

Answer of General Washington.

“May the same wisdom-working Deity, who long since delivered the Hebrews from their Egyptian oppressors, planted them in the promised land, whose providential agency has lately been conspicuous in establishing these United States as an independent nation, still continue to water them with the dews of heaven, and to make the inhabitants of every denomination participate in the temporal and spiritual blessings of that people whose God is Jehovah.”

The next is an address of the Hebrew congregation in Newport, Rhode Island, which is so handsomely written, that I must take leave to read it entire.

To the President of the United States of America.

“SIR:—Permit the children of the stock of Abraham to

approach you, with the most cordial affection and esteem for your person and merit, and to join with our fellow-citizens in welcoming you to Newport.

“With pleasure we reflect on those days---those days of difficulty and danger, when the God of Israel, who delivered David from the peril of the sword, shielded your head in the day of battle; and we rejoice to think, that the same spirit who rested in the bosom of the greatly beloved Daniel, enabling him to preside over the provinces of the Babylonish empire, rests, and ever will rest, upon you, enabling you to discharge the arduous duties of CHIEF MAGISTRATE of these states.

“Deprived as we heretofore have been of the invaluable rights of free citizens, we now (with a deep sense of gratitude to the Almighty disposer of all events) behold a government erected by the MAJESTY OF THE PEOPLE---a government, which to bigotry gives no sanction---to persecution no assistance; but generously affording to ALL, liberty of conscience, and immunities of citizenship: deeming every one, of whatever nation, tongue, or language, equal parts of the great governmental machine. This so ample, and extensive federal union, whose base is philanthropy, mutual confidence, and public virtue, we cannot but acknowledge to be the work of the great God, who ruleth in the armies of heaven, and among the inhabitants of the earth, doing whatever seemeth to him good.

“For all the blessings of civil and religious liberty, which we enjoy under an equal and benign administration, we desire to send up our thanks to the Ancient of days, the great preserver of men, beseeching him that the angel who conducted our forefathers through the wilderness into the promised land, may graciously conduct you through all the difficulties and dangers of this mortal life. And when, like Joshua, full of days and full of honours, you



are gathered to your fathers, may you be admitted into the heavenly paradise, to partake of the water of life, and the tree of immortality.

“Done and signed by order of the Hebrew congregation, in Newport, (Rhode Island.)

[Signed] MOSES SEIXAS, *Warden.*

“NEWPORT, AUG. 17, 1790.”

I must now be further indulged in reading the whole of the reply :

To the Hebrew congregation in Newport, Rhode Island.

“GENTLEMEN:—While I receive with much satisfaction your Address, replete with expressions of affection and esteem, I rejoice in the opportunity of assuring you, that I shall always retain a grateful remembrance of the cordial welcome I experienced in my visit to Newport, from all classes of citizens. The reflection on the days of difficulty and danger which are past, is rendered the more sweet from a consciousness that they are succeeded by days of uncommon prosperity and security.

“If we have wisdom to make the best use of the advantages with which we are now favoured, we cannot fail, under the just administration of a good government, to become a great and a happy people.

“The citizens of the United States of America, have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy—a policy worthy of imitation. All possess alike, liberty of conscience, and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For, happily, the govern-

ment of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection, should demean themselves as good citizens, in giving it, on all occasions, their effectual support.

“It would be inconsistent with the frankness of my character, not to avow that I am pleased with your favourable opinion of my administration, and fervent wishes for my felicity. May the children of the stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants—while every one shall sit in safety under his own vine and fig-tree, and there shall be none to make him afraid.

“May the Father of all mercies scatter light, and not darkness, in our paths, and make us all in our several vocations, useful here, and in his own due time and way, everlastingly happy.

[Signed]

“GEORGE WASHINGTON.”

I come now to the third and last, to which I shall refer. It is “The Address of the Hebrew Congregations in the cities of Philadelphia, New York, Charleston and Richmond, to the President of the United States.” As both the Address and the Reply are short, and very interesting, I will read them entire.

“SIR—It is reserved for you to unite in affection for your character and person, every political and religious denomination of men; and in this will the Hebrew congregations aforesaid yield to no class of their fellow-citizens.

“We have hitherto been prevented by various circumstances peculiar to our situation, from adding our con-

gratulation to those which the rest of America have offered on your elevation to the chair of the federal government: Deign, then, illustrious Sir, to accept this our homage.

“The wonders which the Lord of hosts hath worked in the days of our forefathers, have taught us to observe the greatness of his wisdom and his might, throughout the events of the late glorious revolution; and while we humble ourselves at his footstool in thanksgiving and praise for the blessing of his deliverance, we acknowledge you, the leader of the American armies, as his chosen and beloved servant. But not to your sword alone is our present happiness to be ascribed: that, indeed, opened the way to the reign of freedom; but never was it perfectly secure, till your hand gave birth to the federal constitution; and you renounced the joys of retirement, to seal by your administration in peace what you had achieved in war.

“To the eternal God, who is thy refuge, we commit in our prayer the care of thy precious life; and when, full of years, thou shalt be gathered unto the people, thy righteousness shall go before thee, and we shall remember, amidst our regret, ‘that the Lord hath set apart the godly for himself,’ whilst thy name and thy virtues will remain an indelible memorial on our minds.

“MANUEL JOSEPHSON.

“For and in behalf and under the authority of the several congregations aforesaid.

“*Philadelphia, 13th December, 1790.*”

To which the President was pleased to return the following answer.

“*To the Hebrew Congregations, in the cities of Philadelphia, New York, Charleston, and Richmond.*

“GENTLEMEN—The liberality of sentiment towards each

other, which marks every political and religious denomination of men in this country, stands unparalleled in the history of nations.

“The affection of such a people, is a treasure beyond the reach of calculation; and the repeated proofs which my fellow citizens have given of their attachment to me, and approbation of my doings, form the purest source of my temporal felicity. The affectionate expressions of your address, again excite my gratitude, and receive my warmest acknowledgment.

“The power and goodness of the Almighty, so strongly manifested in the events of our late glorious revolution, and his kind interposition in our behalf, have been no less visible in the establishment of our present equal government. In war, he directed the sword; and in peace, he has ruled in our councils. My agency in both has been guided by the best intentions, and a sense of the duty which I owe my country.

“And as my exertions have hitherto been amply rewarded by the approbation of my fellow citizens, I shall endeavour to deserve a continuance of it by my future conduct.

“May the same temporal and eternal blessings which you implore for me, rest upon your congregations.

“G. WASHINGTON.”

I have no doubt, numerous similar addresses and replies might be produced. These are amply sufficient to show the opinion of general Washington on this subject, and put to rest, I hope, for ever, any similar appeals to his great name, to support a religious test against any religion whatever, much less that of the children of Abraham. I therefore,

not only contend for the abstract right, the general principle of *no religious test*, but take the bull by the horns at once, and say, that, contrary to early pledges, to all rational expectations, you withhold important privileges and benefits of your promised free government, from one hundred and fifty inhabitants of your state, impeached with no crime, and charged with no earthly defalcation; but on the contrary, some of whom, you all know, for high character in society, for moral worth, and strict religious duties, according to the ancient and venerated theology of their forefathers, are a pride and an ornament to any country. Who are those Jews whom you thus shut out of the pale of civil rights? They are descended from a nation of mighty men, famed for military exploits, and their high literary attainments. The country of Solomon, of Saul of Tarsus, one of the strictest of the Pharisees, whose superhuman eloquence made Felix tremble, confounded Agrippa on his throne, and shook the Areopagus of Athens, as he declared to them the unknown God, whom they ignorantly worshipped! who, if he filled the spot I now so feebly occupy, would, by the thunder of his voice, and the lightning of his eye, pierce through and dissipate this thick cloud which has so long hung over the better genius of your state. It was he who reasoned “of temperance, righteousness, and judgment to come.”— Yet he was born a Jew. Who were the most sacred



and famed holy men and prophets of the olden time? Elisha, Isaiah, Daniel, were all Jews. Was not our Saviour of the seed of Abraham, of the tribe of Judah, of the family of David?---Why, these people in religion were your especial progenitors; and the same God who led Moses and the children of Israel out of the bondage of Egypt to the fertile vales of Palestine, led you to independence, to happiness! You have no followers of the koran, nor the zendavesta, nor the morals of Confucius, nor the shaster of the Bramins here, to complain of this test---so that the only people it *practically affects*, are the followers of Moses. Whether you repeal the test, or suffer it to remain, it will never affect any bad Christian; for he who denies the truth and holiness of the religion of his fathers, will *make your declaration of belief* without even straining at the gnat. Your test has had no effect on the bad and hard-hearted; it is the good and the conscientious it bears so cruelly upon.

To substantiate this important position, I will read the opinions of some of the ablest statesmen of the age in Europe---the opinions of two great rival political champions, Mr. Fox, and the younger Pitt.

Mr. Fox said---“Men should be tried by their actions, not by their opinions. This, if true with respect to *political*, was more peculiarly so with regard to *religious* opinions. In the position, that the actions of men, and not their opinions, were the

proper objects of legislation, he was supported by the general tenor of the laws of the land."

As to the disabilities heaped on the Roman Catholics of England, no man deplotes them more than I do; and were I a member of the British parliament, I would be in the van to relieve them---because, when those disabilities were created, there might have been some fear of a foreign ascendancy---now there is none. I will go on further with Mr. Fox, who says:

"There were many men, out of the established church, to whose services their country had a claim. Ought any such man be examined, before he comes into office, touching his private opinions?—Was it not sufficient that he did his duty as a good citizen? Might he not say, without incurring any disability, I am a friend to the constitution, and on religious subjects must be permitted to think and act as I please? Ought their country to be deprived of the benefit she might derive from the talents of such men? But when did the *test* exclude the irreligious man, the man of profligate principles, or the man of no principle at all? Quite the contrary; to such men, the road to power was open—the *test* excluded *only* the man of tender conscience—the man who thought religion so distinct from all temporal affairs, that he held it improper to profess any religious opinion whatever, for the sake of a civil office. Was a tender conscience inconsistent with the character of an honest man?—or did a high sense of religion show that he was unfit to be trusted? Further, if the majority of the people of England should ever be in favour of the

abolition of the established church, it ought to be abolished."

I have before me some other remarks, both of Mr. Pitt and Mr. Fox, on the subject of the Test Act, Corporation Act, &c.; but I must conclude them; and I do not hesitate to say, this liberality of sentiment is, and has been, and ever will be, characteristic of great and liberal minds, in all ages, and in all countries. Even where there is an established church, as in England, you see this liberality of opinion. Mr. Madison's remonstrances against the General Assessment of Virginia, in 1785, which I hold in my hand, breathes the same lofty and enlightened spirit—Church and State are distinct and separate here, and I hope they will ever remain so.

Having thus established my propositions, beyond, I trust, the power of fair and honest contradiction, not by my own assertions and arguments, but by the highest authorities, supported by undeniable facts and calculations—my duty, if I consulted my ease, might here induce me to conclude; but I am well aware, that a solid phalanx of numbers are arrayed against this bill, and it is not safe to leave the field, until I have exhausted every means in my power, far beyond my bare duty; then I shall repose, whether victorious or vanquished, in that tranquillity which nothing can disturb.

Mr. Speaker:---In the remainder of the observations which I shall submit, as having a direct bear-

ing, or even a remote influence, on this question, I shall be altogether guided by my recollections and feelings at the moment, as they may present or evolve themselves in the actual discussion. I now, therefore, pray you to listen to me with rather an indulgent ear.

Sir, I am myself a Christian---an humble and feeble one indeed, and one who I am conscious is unworthy to "unloose even the latchets of the shoes" of many here present. And this charity and liberality which now induce me to advocate the cause of the house of David, make me feel that I aim at some distant and faint similitude to the acts of him who was all goodness, all charity---who could say to his enemies and persecutors, "Forgive them, they know not what they do."---On this, Christianity in spirit and in truth, *not in ceremony and persecution*, I enjoy peace here, and humbly hope for eternal happiness hereafter. The sect in which I was bred, is the Protestant Episcopal Church. I have no doubt, a person may get to heaven that way. My fathers thought it good enough for them; and I see numbers every day, of as good people as any I know, remaining in the same persuasion. Therefore, till I shall be convinced it is not good enough for me, I shall abide with them. The great fear I have, is, that I am not, nor never shall be, good enough for it---But that will be judged of hereafter. Yet I go to see and hear all sects; and I have *full charity* for all. I like some better than others, to be sure;



but I have not a spark of enmity nor antipathy against a single one. Therefore, with me, the good and upright of every denomination, should enjoy complete, equal, civil and political rights.

I know the great cry in this country against the Jews, is, that they crucified Christ. It was specially pre-ordained by God, that act should be done, and they should do it. It was for your redemption. What right then have you to take into your hands vengeance and punishment? God can and will vindicate his own acts. Are you commanded to it? No: you are commanded the very reverse, by the very victim, the very author of the religion you profess---whose solitary sermon on the mount, is worth all that ancient and modern philosophers ever wrote or spoke! Suppose ancient Greece were to form a confederation of all her states, and deny the Athenians equal privileges, because they forced the *half Christian Socrates* to drink the deadly hemlock: it would be not less unjust than your enmity, and, I say, persecution, against the Jews. I know not what these people may be in Europe, where they are borne down by despotism and covered with slander; but in America, they are some of our worthiest and best citizens: nor in their dealings, appearance, and intercourse in life, can you here discriminate them from other persons in similar pursuits. Every avenue to wealth and official station is open to them under our general government.



A Jew may be president of the United States; and yet in Maryland he cannot be a constable! unless he makes a *false declaration*. He cannot bring up his sons to the practice of the law, the high road to fame, and sometimes wealth, in this country. Was ever any thing more cruel? I know an instance: Mr. Etting, of Baltimore, had a son of talents and acquirements: he spared no pains on him. The youth wished to study law. The father, with pain in his heart and tears in his eyes, told him that he could not. *Even to be an attorney of a county court, he would have first to renounce the religion of his father.* Is not this an outrage on the age? Yet in other states there are eminent lawyers, Jews; and so there will be here; for this wretched disability, if not this session, will certainly shortly be annihilated.

Suppose Rothschild, who, with his immense wealth, like some mighty magician, dissolves and forms again the coalitions of emperors, kings and potentates, by some convulsion of the old world be driven to seek an asylum in this western hemisphere---Though our climate, our general character, our central position, our proximity to the metropolis of the union, nay, many other peculiarities, should at first invite him to pitch his tabernacle in Maryland; think, that the moment he recollected this test, he would not dash the garland chalice from his lips? With his genius and his wealth he would

turn with loathing from you, to live in some *Free State*. No more than a month or two ago, a Protestant Church was involved in debt, in New Orleans, for about \$20,000. It was set up at public sale, the pastor and congregation being unable to pay it, and bought by Mr. Judah Torah, a Jew. What did he do with it?---did he convert it into a warehouse, or set it up to make money on it? No: he gave it back, at a moderate rent, to the pastor and congregation. Verily, this "was an Israelite in whom there was no guile." Would a Christian have done this for a Jewish synagogue? Yes, if he were 'as good as a Christian, as that was as a Jew. His merely making his *Declaration*, which perhaps might enable him to be governor of the state, would have put him no nearer doing such an act as this, than if he had never made it.

Let us say a word or two of the fair daughters of Jerusalem; they, like our own matrons and maidens in this land of liberty, must have warm sympathies and acute sensibilities on subjects like these. Why should they not? Their ancestors had. In what ancient or modern history do you find a superior to the beauteous adopted daughter of Mordecai---whose devotion to country, whose obedience to her husband, placed her so far above Vashti, the rebellious queen of Ahasuerus, who ruled from India to Ethiopia? The virtuous Susannah? And those amiable sisters, Martha and Mary, so exem-

plarily solicitous, not only about domestic duties, but the higher concerns of futurity!---their daughters of our time have rather improved than degenerated: they are still the roses of Sharon and the lilies of the valley. After thus seeing and knowing those people, experiencing the beneficial result from no Test in our general government, none in any of the new states, and retained but in two or three of the old---finding no possible ill to flow from this liberality, I am at a loss to discover on any rational or religious principle, why any one can, at this time of day, vote to retain it. Has any one a sort of blind and inveterate faith?---Against such, I am aware, even the most transcendent eloquence would be vain.

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“ The lover may  
 Distrust the look that steals his soul away;  
 The child may cease to think that it can play  
 With Heaven’s rainbow; Alchymists may doubt  
 The shining ore their crucible turns out;  
 But *faith, too ardent faith*, once wedded fast  
 To some *dear doctrine*, hugs it to the last.”

If they are not satisfied with all this experience, in their own country, I fear nothing I can say will alter them. And as Lazarus, while reposing in Abraham’s bosom, said to Dives, “neither would they believe one, although he returned from the dead.” They already have Moses and the prophets.

But, Sir, religion is made the mere stalking-horse

---it has nothing to do with this question—it is resorted to as a political fire-brand—as an electioneering expedient. We see pious persons of all denominations, whether Roman Catholic, Protestant, Methodist, &c. in favour of the repeal, and others of the same character against it. I have talked with many gentlemen here, who say they are in favour of the repeal, but come pledged to vote against it. I certainly shall not undertake to say, that they are not bound by those pledges—they best understand their own consciences—I am no casuist. As to myself, if I were to give a *positive pledge*, and the state of things and my opinion did not change honestly and rationally, from what they were when I gave the pledge, I would abide by it. But I would not suffer a portion of my constituents, who I was not morally certain were a majority, but believed to be a minority, to direct and control me on a great constitutional question like this. Indeed, as we take an oath on constitutional questions, the general rule in politics, is, that on those questions you ought not to suffer yourself to be bound by instructions. I rather think so myself—certainly not subsequent to your election---but even then, or at any other time, whether you pledge or not, if you know and believe that your own opinion is contrary to a majority of your constituents, you ought to resign, or vote their will.

I have no doubt but a large majority of the people

of Maryland are in favour of the repeal---and a member here, on a constitutional question, acts for the state---therefore the little sectional politics should not govern him. In that view then pledges appear to me no more capable of chaining a delegate down to the earth, than were the withes, whereby the Philistines attempted to confine the strong man in Scripture. The repeal passed both branches of the legislature last session; it has just passed, and come down to us from the grave senate this session, and I trust a majority of this house will give the finishing blow to this evil, and wipe this stain for ever from our code. Once repeal this Test, and it will never again be even attempted to restore it.

On this subject, had I the power, I would send forth my voice, that it should be heard from Damascus to Ezion Gebar; up hither and down thither Jordan---from the Arabian Gulf to the Pillars of Hercules. It should roll its swell over the slumbering fisherman where Tyre once stood, and reverberate amidst the mountains of Gilboa.

Sir, I impugn the motives of no gentlemen in this house, who may vote against this *Confirmatory Act*. Many advocates of the Test, both in and out of this house, I have no doubt, in their own judgment, are governed by high and pious motives. But I have thought some persons are in favour of the Test, because it operates as a sort of monopoly of offices. The more people you disqualify from



holding offices, the more remain for them and their friends.

This Test, Sir, is like those powerful genii in the Arabian tales, placed at the portals to guard the treasure within ; it stands like the cherubim of old, at the gate, with their flaming swords, to watch the Hesperian fruit of office and of place. Though, unlike the cherubim of old, the innocent, not the guilty, are here the objects of opposition. It is said, the Jews enjoy every thing in Maryland, except appointment to office. Is this so slight a prohibition?---Is not wealth, and honour, and consequence, often, very often, included in this prohibition?---Is not political power, and office, and place, and patronage, with many men a ruling passion? If then our once happy and perfect first parents, could not be contented with *every possession*, but craved even the solitary apple that was forbidden them---how can the children of Abraham rest contented under a prohibition, which includes so many important and piquant incentives!---This is human nature. How was it with Haman, the high chamberlain of the king---blest with every thing, even admitted with the royal spouse, the only guest at the queen's banquet---yet, what availed all that, when there remained at the king's gate *one solitary individual*, who sat still, and declined paying him homage and respect!

Some fear, if we destroy the Test, we shall in-

jure, nay, destroy, the Christian religion---why is it not destroyed in those states where it never has existed?---nearly fifty years have tested the wisdom of the omission. Why does it not affect your whole general government, congress and all? Are they, or any one of them, less religious than this assembly, or any one of it?---Sir, that religion, whose founder was shadowed out in the Polio of the Mantuan Bard, to the heathen world, and by the Jewish prophets, and chief by him “whose hallowed lips were touched with fire,” to the Christian world, is not to be injured nor destroyed, by liberality, by charity! This Test is a restriction on the people---it says, they shall not elect a man for a particular service, unless he declare, *after* his election, that he possesses a particular superadded qualification, which the people, who may have elected him, think has nothing to do with that service. The people have cause to complain, and a large majority of them do. It is vulgarly called a Jew Bill; it might as well be called a Mahomedan or Persian Bill---indeed, its most proper name is, a Turk Bill.

It is against the spirit of the age---it is against the spirit of your declaration of rights: and on that rock, the constitution of the Union, I build my argument; and all the powers of sophistry and deception shall not prevail against it. In this position I rest secure and inexpugnable!

I will for ever hold up my hands against this re-

striction—it is the same spirit of persecution which drove our ancestors from Europe, from culture and civilization; and they preferred a settlement here, with freedom, amidst savages and a wilderness. Why do you not perform the precept of the religion you *declare* in?—“Do unto others as ye would they should do unto you.”—No, you do not, unless you shall confirm this law. Do you not take away every spur to high-minded and honourable ambition?---even professions by which they might earn their daily bread! Do you not wish to continue them for ever hewers of wood and drawers of water?---You will be mistaken---already the mandate for this repeal has gone forth, and it will, it must, ere long, be obeyed. I wish to pluck from the pile of religious intolerance, this last brand, and extinguish it for ever.

I shall enter my vote solemnly against the test; whether my exertions be successful or not, I cannot tell; but be they as they may, I regard this as one of the proud days of my life, and though, like many past ones, bright to myself, it may not be so fortunate to others as I could wish.

Israel prays to you in her oppression and tribulation! Hear her---you have no excuse; for I say, there *is* balm in Gilead---there *is* a physician there! It rests with you, who have the power, to restore health to the daughter of her people!

# **SPEECH**

OF

**JOHN S. TYSON, ESQ.**

DELIVERED

IN THE HOUSE OF DELEGATES OF MARYLAND, 1825,

ON THE

**JEW BILL.**

---

MR. SPEAKER,

After having been for twenty years engaged in this arduous struggle for the rights of man, and sustained during the whole of that time repulse upon repulse, and disaster upon disaster, having felt the sweets of a victory obtained at one session, embittered by discomfiture at another---the friends of religious toleration succeeded during the last assembly, in making a breach in the walls of the enemy. Under auspices the most favourable, with renewed vigour in their arms, and ardour in their hearts, they again approach the broken wall, exclaiming, in the language of Henry, before Harfleur, and with the like assurance of success,

“Once more unto the breach, dear friends, once more.”

It is natural for us to inquire, why the triumph of this cause has been so long delayed?

I answer, because of the ignorance of some of the people, the prejudices of others, the bigotry of one portion, and the honest, but mistaken zeal of another---an ignorance, prejudice, bigotry, and zeal, fostered by political demagogues, who, though in heart and soul, they were neither Christian, Jew, nor Turk, professed to be the humble supporters of the religion of Jesus.

Hence it was, that an opinion was inculcated among the people, that the test bill, as it was called, was a bill to abolish Christianity---that the state was about to be inundated with Jews and Turks---that Maryland would become another Judea, and Baltimore another Jerusalem. Those demagogues have, however, within the last year, preserved a commendable silence. The people have been left free, to think and act for themselves---and they have left their delegates free to think and act for themselves; and the question is now submitted to an unpledged legislature.

On all constitutional questions, and particularly on one of this kind, the first cry is, that the constitution is a sacred instrument, it ought not to be touched, it is much better to endure grievances than to remove them by an alteration of the constitution.

In India, the people worship the great Mogul;



in Europe, they worship their kings and emperors; here, however, they worship their constitution. This, though better than the others, is bad; because it is idolatry. Idolatry is still idolatry, whether the idol be a constitution or a king; and, I may add, that tyranny is still tyranny, whether the tyrant be a piece of paper in the shape of law, or a despot in his kingly robes. As the idolatry of a people towards their king is the strongest support of his despotism and the inherent vices of his nature, so the idolatry of a people towards their constitution, is the strongest support of the tyranny of that constitution, and its inherent vices.

Think not that I undervalue the great charter by which our government is bound together---I venerate, though I do not adore, our constitution; and it is because I venerate it, that I am anxious to purge it of whatever is calculated to render it less and less an object of reverence.

The constitution itself gives us the right to alter and amend it. It is our duty to put this right in exercise, whenever experience demonstrates its necessity. I would search for the evil even through the ruins of the superstructure, and cleansing the foundation, build up the edifice anew, rather than permit the evil to remain, until it should itself have undermined the constitution, and in some ill-fated moment should bring it down in ruin upon our heads. But, sir, the evil we are now considering,

is not so difficult of access---it is upon the surface of the constitution, ay, sir, upon the house-top, a standing and disgraceful spectacle in the eyes of all the world.

But the benefits (it may be said) of this act of toleration will be circumscribed within narrow limits, will be enjoyed by only a few individuals—so solemn an instrument as a state constitution, should not be altered for the benefit of a few. What then? Will you do it when their number shall be greater? No. You will then say, that it would be dangerous to grant constitutional privileges to so many Jews. Sir, the Hebrews of Maryland are more entitled now, if not to your justice, at least to your sympathies and charity, than they will be when the present handful shall become a multitude; because they are weaker, more dependent upon your magnanimity; less able to maintain of themselves the rights of freemen. Would you feel the less indignation towards the iron hearted, grasping guardian, because the victim of his rapacity was an infant orphan? Oh! no,—you would execrate him the more, because of the weak and defenceless condition of the suffering innocent.

So should you regard these unfortunate Hebrews. They are the political orphans of your state, not made so by their follies or their crimes; not by any of the natural and inevitable calamities of life; but orphans by desertion, abandoned by their parent—

cheated of their birthright—nay, even deprived of their legitimacy.

But, sir, honour! the honour of the state is concerned. A nation may be dishonourable in a very small matter---a nation may be dishonourable, nay, even cruel, without committing a single act of dishonour or cruelty. If a clause existed in your constitution, which would subject to stripes or imprisonment, every freeman who should flee from a foreign land for refuge to your shores---it might happen that not a solitary being would suffer himself to be the victim of such injustice; but would the nation be any the less dishonourable or cruel? No---because dishonour and cruelty, as well as honour and humanity, are in the heart, in the intention, not in their external manifestation by outward signs. Therefore, although there was not a single Jew in Maryland, the clause which subjected them to oppression being in the constitution, the dishonour is as great as it would be if a hundred thousand Jews suffered under its tyranny.

The honour of the state, (I repeat it again,) the honour of the state is involved. The people of Maryland have gone on for many years past, as if they cared nothing about the honour of the state, when it was tarnished by themselves. They have jealousy enough for the honour of the nation abroad ---if a foreign frigate fires into an American sloop of war, or a foreign government insults an American

ambassador, how sensitive are we on the occasion. The cry of vengeance rings from Dan even unto Beersheba. We are ready to put the whole nation in a panoply of offence. But a much worse dishonour we will suffer to remain untouched, when inflicted by our own hands, upon our own country. Yet in my apprehension this is infinitely worse, because, in the former case, we being the victims of another's outrage, another shares a great portion of the shame, whereas, in the latter case, we bear it all alone.

The next objection which I will notice, is one of a very singular character, and yet I have frequently heard it in conversation with some of the members of this house. They object to this bill, and will not vote for it, because it is only a Jew bill, and not also a Mahomedan bill---a Gentoo bill---in fine, a bill sweeping away at once, every religious test from the face of the constitution. If such a bill were now before the house, I venture to affirm that some of these very individuals would object to it because it was not exclusively a Jew bill---I am afraid, lest with some, this objection is used as a cover to the world for real sentiments, or as a *quietus* upon self-reproach.

If there are any who sincerely entertain the objection, I would ask them, whether, by a universal abolition of the test bill, one of the objects to be gained, would be the relief of the Hebrews? Why

not join in their relief now?---have you charity enough to comprehend the whole multitude of discordant faiths in the world---and have you at the same time too little for the persecuted Hebrews alone!

I, sir, am as strongly in favour of the entire abolition of the test as any member of this house can be. Indeed, one of the reasons which have urged me to the support of the Jew bill, is the belief that it would open the door for entire and unconditional toleration; but I know that I cannot obtain that now. Am I, therefore, to suffer my charity to grow cold, and fall at once from the very boiling point to half a dozen degrees below zero? No; I will keep it warm and vivid by exercising it upon the sons of Abraham. I would fear that if it should perish now, even a bill for the universal abolition of the test would not hereafter be able to restore it to existence.

Sir, I can see many strong reasons, convincing to my mind, why the portals of religious freedom should be first opened to the Israelite---his religion ranks next to ours---the God of the Christian is the God of the Jew. For the knowledge of that God, we are indebted to his fathers; that knowledge, like the sacred fire of old, was preserved by them from century to century, until the power of Omnipotence, through the ministration of Jesus Christ, scattered it abroad upon the face of the earth, to burn with



unextinguishable brightness. We owe to them the history of the antediluvian world; we owe to them a great portion of the holy scriptures---above all, we owe to them the birth of Jesus Christ. Let them, therefore, first enter the temple of religious freedom, and not in company with the disciple of Mahomet, or the blood-stained worshipper of Jugger-naut, whose presence is an abomination to the Jew.

Having thus disposed of these preliminary objections, which, if admitted, would close the very door of discussion upon us; let us look at those which go to the merits of the bill.

The Jews are unworthy of relief! Why are they so? Bring forward your charges in the face of the day; but first gather the dispersed of Judah, from the four winds of heaven, and assemble them at the bar of this earthly tribunal, where mortal man presumes to act as the vicegerent of heaven. Sir, as the advocate of this people, I plead to your jurisdiction. I deny your right to preside over the consciences of men. Ah! but, I hear you say, we have the power, and will exercise it. That is true. You have the power, and you will exercise it, and we must prove our innocence, or suffer the punishment of guilt.

When a tyrannical parliament had summoned the whole American nation at its tribunal bar, to show the cause why they should not be deprived of the rights of freemen, the immortal Burke stood for-

ward as their champion. He told the British parliament that it was hard to draw a bill of indictment against a whole people. Were this great man now among us, and advocating (as he would advocate) the cause of the oppressed Israelites---he would say again: "It is hard to draw a bill of indictment against a whole people." There is nothing like it in the history of the world; there is no instance on record of the trial of a whole nation at once, excepting that of the American people, before the British parliament; and the Hebrew nation, before an American tribunal. The cases are alike. The difficulty is the same in each: it is, that no such charge can be drawn into any shape, that will be consistent with the constitution of a free people, or the rights of human nature. This is our argument of strength, and if it be true, cannot be resisted. Exhibit your charges!

The Jews do not believe in Jesus Christ! This cannot be disputed as a fact, but it is disputed as a cause of accusation. Who made them Jews? The same being who made you a Christian. They had as little control over the destiny which made them the sons of Abraham, as you had over that, which cast your lot among a Christian people. Born as you are in a Christian community, taught no other faith, or taught it only as an object of execration; is it wonderful that you profess the Christian religion?

Born as the Jews are, descendants from a line of ancestry, traceable to the first period of the world's existence, all professing the same faith, a faith communicated by God himself, in the midst of thundering and lightning upon Mount Sinai,---educated in this faith, from their earliest infancy, and wedded to it by the cementing power of persecution, is it wonderful that they should continue to profess it? The wonder would be, if they should burst through the mighty mound of circumstances in which they are intrenched, and come over to the camp of Christianity. Sir, if they had been born as you were, they would have been Christians ---if you had been born as they were, you would have been Jews.

When, therefore, you censure the Hebrews for not being Christians, you arraign that mighty being who holds in his hands the reins of destiny, and who, for purposes inscrutable to us, has cast their lot in the midst of necessities, which compel them to be Jews. It is their fate, it may be their misfortune; if so, they are objects of Christian charity, not for Christian persecution. Are you still disposed to condemn them, because they do not believe in the religion of Jesus Christ? I would ask, how many in this Christian community of those who are not Jews, are believers in that faith? how many in this assembly, I would emphatically ask, how many among those who oppose the claims of the children of Israel?

You will answer, all. This may be true in one sense—all of you may have an historical belief of the existence of Jesus Christ, and a theoretical belief in the doctrines which he taught—but are you all believers, in the true sense of the term? do you practise what you profess? If you do not, then are you in a worse condition than the Jew, who to the uttermost of his humble powers, fulfils the law of Moses. He lives up to the light and knowledge which he has received—you act against that which you profess. You have been born in the midst of Christianity---you have imbibed it, I had almost said, with your mother's milk; you have from the pulpit, week after week, and in the closet, day by day, received line upon line, and precept upon precept: yet you wander from the line and disobey the precept. The Jew has none of your advantages, and yet he does no worse than you; nay, he does better! for the faithful Jew practises Christianity without professing it---you profess it without practising it.

“Judge not therefore, lest you be judged, for with whatsoever measure you mete, it shall be measured to you again.” Whosoever here is without this sin, let him cast the first stone. If this advice be taken, I am inclined to think that very few stones will be thrown; no, not one—for I am confident that those who are without this sin, possess too much of the spirit of Christianity, to raise the hand of vio-

lence against these unfortunate sons of persecuted fathers.

But you may say, we do not condemn the Jew because he disbelieves in a different religion, but because the principles of his religion are dangerous in a Christian community.

I ask, how long have this race of people existed in this country? and when have they manifested that their principles were dangerous in a Christian community? Sir, they have existed here ever since the first settlement of the American colonies, during all which time, nothing of this dangerous character have they manifested. They have been as harmless as doves—like lambs before their shearers, they have not opened their mouths, even in reproach for the persecutions they have received.

But the religion of that people, it will be said, though innocent in private life, is dangerous in the administration of government. This supposes the establishment of the Jewish religion as the government religion. The object of this bill is not to do that. If you mean to say, that within the limits of possibility, the Jewish religion may become the state religion, if it be encouraged by the passage of this bill, and therefore you ought to oppose it—I reply, you adopt an argument which goes to the exclusion of every religious sect in the community---Catholic, Protestant, and Dissenter. But you may say that these are Christians, and they



would not seek any ascendancy over their fellow Christians. If they *were* to gain it, they would not abuse their authority as the Jew would. Sir, this is reasoning against human nature, and in the face of history. Cloak religious power as you will, you will always discover with it one inseparable companion---the disposition to abuse it.

There is not a religious sect in the world, which has not abused power when it possessed it. Did not the pious Calvin, when he held the two-edged sword of civil and religious power, stain it with the blood of persecution? Did not the devout Presbyterians who fled from the tyranny of British intolerance, to build the church of God upon the rock of Plymouth, forget the day of their past calamity, and stain even the paradise of liberty, with the blood of martyrs? But not to go to past ages, look at England, or rather look at Ireland. You there see six millions of Catholics, with human hearts in their bosoms, cheated of their birth-right, enslaved and trampled upon by the leaden foot of religious tyranny.

You cannot expect more than this from the Jewish religion. And yet you have more to fear from every Christian sect than from the Jews, because every such sect is more numerous, and, therefore, more likely to usurp religious power.

Besides, a Jewish hierarchy can only be supported by the laws of Moses. These never can be intro-

duced into this country. For, in order to enforce them, there must be a temple; that temple must be established at Jerusalem; there must be an especial order of priesthood, an order, which, since the destruction of the former priesthood, can only be established by divine authority. The idea of the establishment of the Hebrew religion in Maryland, as the government religion, is preposterous in the extreme; it is a conjuration too weak to terrify even infant apprehension. If this state of Maryland, were the only spot on all the earth that afforded a resting place for these wandering sons of Judah, in their pilgrimage through all lands, we might fear an inundation—but,

“The world is all before them, where to choose  
Their place of rest, and Providence their guide.”

They have, however, chosen one country, as the abiding place of their posterity. The Jews of the east look to the west—those of the west look to the east, and they all cast their eyes on that sacred spot, where, amid all the sublimities of nature, the divine law of Moses was first given to the Israelites. That is their place of future rest on earth.

The last accusation which I shall notice is one of a heinous character indeed---The Jews crucified the Saviour of the world!---What Jews? Not the Jews of this age or this country---not the Jews of Maryland!---The deed was done eighteen hundred

years ago, and in a period of consummate wickedness throughout the world. We have divine authority, for saying that the sins of fathers shall not be visited upon their children later than the third and fourth generation---and shall the flame of *human* vengeance burn for twenty centuries?

There is not a devout Jew in existence, who does not mourn the deed done on Calvary. It was a bloody deed, and bloodily has Judah answered it. The generation who witnessed the crucifixion, had not passed away, ere the furies of fire and sword, famine and pestilence, mingled in the work of her destruction. Far and wide,

“ Temple and town went down, nor left a site.  
Chaos of ruins ! who shall trace the voice,  
O’er the dark fragments, cast a lunar light,  
And say, here *is*, or *was*, where all is doubly night?”

Thousands were slain by the sword—the rest were carried into captivity ; no age, sex, or condition, was regarded ; the very name of Judea was blotted from the roll of nations. Was not this enough?

Their descendants, from generation to generation, for twenty centuries, have been the victims of a persecution, unparalleled in the history of any other people. In every period of the world’s history, in every nation under heaven, by every sect, they have been imprisoned, tortured, and massacred—sewed up in the skins of wild beasts, and

thrown to the dogs in Asia—chained to the galling car for life in Africa—burned to death in Spain—flayed alive in Italy—fleeced and sentenced to banishment from time to time in England—plunged into the catacombs in France—knouted in Russia, or driven to perish in the wilds of Siberia. Is not this enough?

It was only a few years since, that a poor Jew in Polish Lithuania, was condemned to be tortured to death on account of his religion. They cut off his hands, and then thrusting the bleeding stumps into a pot of boiling pitch, called upon him to recant. He only exclaimed, Oh God of Abraham! have mercy upon them! Oh God of Isaac! have mercy upon them! O God of Christ! have mercy upon them! and then expired. Which of these, Mr. Speaker, was the Christian? The records (may I say,) of heaven, will bear testimony in favour of the Jew.

Ought not the world to be tired of such scenes? Shall we, instead of execrating them, join in the full spirit by which they are prompted? We join in this spirit, if we deny them the rights of freemen—the inalienable rights of human nature. We do deny them these rights, when we refuse to pass the bill now upon your table. By the constitution of our, and *their* country, by the constitution of human nature, are they entitled to those civil and religious

privileges, which this bill is intended to confer upon them.

As the data upon which I found this position, I refer you to the immortal instrument which preserved to us the like privileges, when the hand of foreign domination was raised to crush them. I mean the charter of our independence. "We hold these truths to be self-evident—that all men are created equal :"—the Jews are men ; therefore, created your equals---but do you treat them as such? No. For you say, they are unworthy to sit by your side in the administration of a free government.---"And endowed with certain inalienable rights. That among these are life, liberty, and the pursuit of happiness." But you have curtailed them in their liberty---you have hindered them in their pursuit of happiness ; the best of all kinds of liberty, religious liberty ; and the purest of all sorts of happiness, eternal happiness. "For the preservation of these, governments are instituted among men."---But your government is instituted for their destruction. You have put them under the ban of the republic. "Deriving their just power from the consent of the governed." They never gave you power to deprive them of their civil and religious privileges. The people of Maryland did not surrender to the convention who framed their constitution the right to control their consciences. They could not surrender it, because it was an inalienable right.



Sir, do you not acknowledge the force of this instrument? Your articles of confederation are founded upon it, and your existence as a state in the great union, is founded on the articles of confederation. It is a component part of the constitution of that union, and endowed with its power. In opposition to every state enactment, this power is omnipotent. The clause therefore, denying civil and religious freedom to the Jews, is expunged from your constitution. The bill now on your table gives to that people no new rights, it merely preserves to them rights which are immutably and inalienably theirs.

Sir, if you continue to enforce this outlawed clause of your constitution, you rear up with the hand of arbitrary power, that worst of all monsters, a religious hierarchy. Do not the words frighten you? and yet they are true.---The principles upon which you uphold even the pure Christian religion, to the exclusion of every other, are the principles which uphold the inquisitorial government of Spain, and the Episcopal hierarchy of England. The right to put up one religion, is the right to put down another---the right to put down one, is the right to put down all; and the right to put down all, is the right to build up *one* upon *their* ruins. The right to build up or pull down in one particular, involves the right to do so in all; and you may, therefore, whenever you choose it, establish a Presbyterian church government, an Episcopalian church go-

vernment, or any other church government, upon the ruins of every other religious society; nay, upon the ruins of civil government itself.

In order to prevent these terrible consequences, let us vote for the bill now upon the table. Let us pronounce a verdict of not guilty in favour of the persecuted sons of Abraham. It will be registered in heaven—the recording angel will drop a tear of joy, as he notes it down, and all the melody of heaven will join in hallelujahs on the event.

Some gentlemen are angry with this bill, and will not vote for it, because it has taken up so much of the time of the house. Sir, the only way to get rid of this bill, is to vote for it—otherwise, it will return upon you again; it is invulnerable and immortal; cut off one head, another will rise in its stead. Next to the dishonour of suffering this stain upon our constitution, would be the ignominy we should suffer, should it be said, with truth, that no one in the legislature of Maryland could be found, bold and honest enough, to defend the cause of religious toleration. I will guarantee, that one gentleman, at least, will do all he can to prevent so foul a tarnish on our name and character. Should it please the caprice of the people to remove him from the councils of the nation, or the wisdom of Providence to call him to a better world, I guarantee that *another* will succeed him, though he will be little able to supply his place.

I beg pardon of the gentleman from Washington for thus introducing him to the house. I could not do otherwise, because his name is identified with the Jew bill. You cannot think of the one without thinking of the other---he was an early champion in the cause; Atlas-like, he bore it upon his shoulders at a time when it was too heavy for all other men---it fell---he raised it---it fell again---he raised it again---and again. Like Sisyphus, he was compelled, alternately, to roll up the stone, and suffer its recoil. The enemies of religious freedom in Washington, withdrew from him their support, and he ceased to be a member of this house. Even then, he continued to labour in the cause. He once more comes into the hall of legislation, and his very first act is to bring the Jew bill before the house! Let him consummate the work---He began it, it is his right to end it. Let him be both Alpha and Omega. I would pray for the stamp of immortality on what I have said, merely to perpetuate his glory.

# **EULOGY**

ON

**JOHN ADAMS AND THOMAS JEFFERSON,**

PRONOUNCED AT PENSACOLA, IN AUGUST, 1836,

BY

**H. M. BRACKENRIDGE.**

---

FELLOW-CITIZENS,

The occasion on which we are assembled, is so deeply interesting to every American heart, that the simple annunciation would seem to preclude every embellishment, or amplification of oratory. The genius of a Cicero, or a Demosthenes, might be fired by the glory of such a theme---a theme as immortal as their eloquence. But alas! your humble orator feels himself oppressed by sensations to which he has no words to give utterance.

Our venerated sages and statesmen, JOHN ADAMS, and THOMAS JEFFERSON, having reached the goal appointed to the race of man, now rest from their toils ---they have fallen asleep, with a transition as mild and as gentle

“As summer evening’s latest sigh,  
That shuts the rose.”

For their departure, attended by no circumstance of pain, of terror, or regret, (if I may say it on this solemn occasion,) has deprived death of his sting, and the grave of its victory. No, they are only awakened to immortality---they are awakened amid the loud acclaim of twelve millions of their countrymen, the witnesses of the glorious apotheosis! If we may be permitted to indulge the fond imagination, we may behold the good, the great, the wise, the blessed, of every nation, of every clime, "on a hill apart," prepared to receive the illustrious strangers,

"——— just rising into view,  
From earth's dispersing mists, to heaven's ethereal blue."

We may behold the translated worthies of every age, stretching forth their hands to the patriarchs of America, to the apostles of the liberties of mankind, and hailing with such joy as angels feel, their entrance into the regions of eternal serenity and peace. For when we consider the circumstances under which our beloved fellow-citizens closed their long and useful lives, circumstances so peculiar and extraordinary, we are almost tempted to believe that we have witnessed the manifestation of a special Providence. On the same day, almost at the same hour, that day the JUBILEE of our liberties, these venerable men, who led us forth from bondage, who guided our steps through the wilder-



ness, having reached the utmost bound of human life, after fulfilling every obligation imposed by that being, who intrusted to them those great abilities for the benefit of mankind, having attained every thing in this transitory existence, which the good and wise can desire, were at last summoned to their "great reward," amid the celebrations of that day, which they had rendered ever memorable in the annals of the world! Since the departure of the FATHER OF OUR COUNTRY, no event has occurred to occasion a pause so deep and solemn. But it is an event so replete with consolations, even to those whom the ties of kindred, or the attachments of friendship, drew around the mournful couch of their repose, as to heal almost at the same moment that the wound is inflicted on the heart. A whole nation has gone forth to testify their respect for the memory of two of their fellow-citizens, whose only power was that of wisdom, whose only authority was that of virtue. Every heart melts at the names of the SUCCESSORS OF WASHINGTON, every tongue endeavours to pronounce their eulogy. But that eulogy will be no episode in the history of our nation, for their actions will constitute the very materials of that history. If Washington be the rock on which our liberties are built, these are the corner-stones of the edifice. Bear with me, then, for a moment, while I dwell on the virtuous actions of these great men, although I feel that my words

must be cold, compared with the warmth which animates your hearts.

To begin with the immediate *successor of WASHINGTON*---THE SUCCESSOR OF WASHINGTON! In these few words how much more is comprised than can be expressed by all the studied strains of panegyric! For great must have been his claims to the respect and confidence of his country, to have been chosen from among so many illustrious men, by whom it was then adorned; to have been chosen by the free and impartial suffrages of an enlightened people, to fill the place of WASHINGTON. Perilous as such a situation must have been to any mortal man, it was yet the highest testimonial of his worth that his country could bestow. And that testimonial was well deserved. From the very commencement of our colonial oppressions, America looked upon the subject of it, as one of her boldest champions: his name was already allied to liberty;

“Each generous Adams, Freedom’s favourite pair;”

and long before the awful struggle, he had maintained by his eloquence those principles which were afterwards sealed by the blood of our heroic countrymen. To the historian and the biographer, we must leave the detail of events so worthy to go down to posterity for the instruction and delight of future ages. Suffice it to say, that when an appeal to arms became unavoidable, he was delegated to the

councils of the confederacy by the principal colony of the north. Here his glowing eloquence, his bold and decided character, soon placed him at the head of the orators of a body, justly eulogised by Burke and Chatham, as one of the most dignified and august, that had ever been assembled. After two years of distressing civil war, carried on by our fathers in defence of those rights, which they maintained as men of English race, and claimed to participate with their brethren of England—when every expedient, every remonstrance, every appeal was resorted to in vain, to induce an infatuated ministry to renounce their hated policy, our affairs attained a solemn crisis. The attachment to England, the country of our common ancestry, whose history, whose arts, whose laws, whose genius, were ours, still held us by ties we knew not how to sever— which we could not break. But it became evident that we were exhausting our resources, and our strength, without looking to any ulterior object of adequate importance. A total separation was the last, the painful resort; it was like Æneas tearing away the bleeding branch from the trunk of his unhappy brother. A prospect, wide and boundless, was opened; its scenes were new and untried. Even in that enlightened body, the first congress, elevated as it was above popular feeling, and contemplating the present, and the future, with all the calmness of philosophy, and yet all the ardour and

*most declaration*  
*declaration -* courage of patriotism, many a "longing, lingering look was cast behind." Even when the final vote came to be taken on that ~~eternal monument~~, presented by Franklin, Jefferson, Adams, Sherman, Wythe and Livingston, a ~~monument~~ which traced,

"Moral nature through her total plan,  
 Marked all the steps of liberty and man,"

*on meeting*  
*unanimous*  
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 it was ~~approved only by a majority~~—many, still fondly clinging to the hope of safe and honourable reconciliation, were reluctant to pass the boundary, from which there was no return. But then it was, that the power of the orator was ~~required to be put forth~~—it is on such occasions that eloquence is divine, and it was then that Adams deserved the thanks of his country, the applause of posterity, and the eulogy of every succeeding age. With all the fire of Demosthenes, he painted the griefs of his injured country; ~~laid open the fell designs of her enemies~~, pointed out the dangers which threatened her liberty---her existence, and infused into ~~their~~ brave, *the* but hesitating hearts, the courage to pursue the boldest measures. Rising to a pitch of enthusiasm, which the occasion inspired, an enthusiasm approaching to inspiration, he unfolded the glorious destinies of his native land, and foretold that THE DAY ON WHICH AMERICA DECLARED HER INDEPENDENCE, would be a day of triumph, of rejoicing, of exultation, through all succeeding time. And

*of his countrymen -*



most signally has that prophecy been fulfilled ; still more wondrous, the far-seeing statesman, after having lived to see the complete fulfilment of his prophecy, after having seen his beloved country during half a century in the onward march to greatness and felicity, under a government firmly consolidated by wisdom and experience, breathed in peace his last in a wish for the perpetuity of its independence,\* on the very day of the anniversary, perhaps at the very hour, which had been signalized by his prophetic eloquence.

During the seven anxious years which succeeded this memorable day, while our country was more frequently darkened by the gloom of adversity, than brightened by the rays of success, Adams gave his individual and unwearied support to that cause, in which he had staked every thing dear to man. We find him wandering from court to court, from government to government, soliciting the slow and reluctant aid of Europe, and experiencing all the anxious feelings of alternate disappointment and

\* On the 4th of July, 1826, the orator of the day, Mr. Whitney, called on Mr. ADAMS, and asked him for a sentiment to be delivered at the table in the afternoon. He said, "I will give you, *Independence for ever.*" After a few moments had elapsed, a lady present asked him if he wished to add any thing to the toast; he answered, "*not a syllable.*" This was within an hour of his dissolution in the evening.



alternate hope. But at length, when, in part through the success which crowned his mission, our victorious eagle was planted, by the arm of WASHINGTON and LAFAYETTE, on the last hold of our enemy, when the contest was no longer doubtful, when the olive branch was tendered by that monarch, who had lost the brightest jewel of his crown, Adams was chosen one of the negociators of peace. No sooner was this happily accomplished, than he was selected as the *first ambassador* of a new and independent people, the former subjects of the monarch to whom he was sent, and who had been the subjects of his ancestors. That the sensibilities of both were deeply affected at the first interview, was no reproach to the ambassador, and did honour to the character of the British king, who declared on the occasion, that although he was the last to conform to the afflicting separation, he would be the first to meet the friendship of our country as an independent power. During his residence at the court of St. James, he used every laudable endeavour to heal the breach which had been made; for although as a patriot the land of his nativity was the first in his love, yet his affection for the land of his fathers was not eradicated. He was impressed with a generous belief, that a firm friendship between two nations so strongly allied by nature, could not fail to advance the prosperity of both. These sentiments

he urged to his own countrymen, with a zeal which rendered even his patriotism suspected, for the strong resentment which had been awakened in their breast could not be at once subdued, and it was ordered, perhaps for wise purposes, that the hearts of the British ministry should be hardened towards us. The time had not come, when that friendship which Adams so ardently desired, could be safely indulged.

When that second revolution took place among us, which secured all the advantages of the first, the establishment of the present confederated government, Adams was called, by the voice of his fellow citizens, to fill the second place in the republic. Precluded, by the nature of the station in which he was now placed, from any active share in the details of administration, he employed his leisure hours in communicating, through the press, those lessons of his ripened experience, and the result of those profound researches, which have rendered him one of the classic writers of America, and one of the most distinguished of the age. With a masterly hand he analyzed the parts of every republic which then existed, or had come down to us through history. He traced out the causes of their decay, their weakness, or their strength, with as much ease as the most ingenious artist separates, or puts together, the various parts of the most complicated machinery.

He saw that property, especially landed property,\* was the fountain of power in the state; that the more general its distribution among the members of society, the less would that power become concentrated in the hands of one, or of a few. It is remarkable, that his enlightened compatriot, of whom I am presently to speak, was led by his reflections, to the same result; and was so fortunate, in his native state, as to suggest a remedy, as mild and effectual, as the imperceptible renovations of nature. How far some of the less flattering views of the sage of Quincy may be unjust, let us not too hastily decide, but leave to the slow and unerring award of time.

Let us follow him to more active scenes, where he was called to the highest responsibility, and the highest honours. When at length the great Washington, like the hero of Ossian, "heard the call of years," and resolved to retire to private life, all eyes were turned to Adams as his successor. But alas! who could be found to lift the spear of Fingal! Of those times, the various and distracting incidents, and their causes, must be left to the impartial historian, who, unbiassed by party feelings, shall render justice where it is due, and pass censure where it is deserved. His country, even at this day, pro-

\* The doctrine of Harrington is fully unfolded in his "Defence," &c.

nounces with one accord, that the intentions of Adams could not be other than pure ; and we may acknowledge, without an effort of candour, that when the helm was confided to him, our system of government was yet unconfirmed by experience, that it had to contend with the jarring elements of discord, at a time when the whole world was convulsed by the fires of a volcano ; that the mighty name and influence of Washington, like a vast mound, had alone withstood the accumulating mass, which threatened to overwhelm his successor, whoever he might be. And let us in some things anticipate the tardy judgment of posterity, and dare to be just ; let us acknowledge, that many of the severest censures of the administration of Adams, are to be ascribed to the excitement and errors of the times ; and that it was productive of fruits, rich, and glorious to our country. Adams is the FOUNDER OF OUR NAVY. He saw, at an early period, that should we come in conflict with other nations, it must be on the ocean ; our commerce, growing with extraordinary rapidity, would there require to be protected from rapacity and injustice. On that element have arisen our principal collisions with those nations, which have “ felt power, and forgot right ;” but the frigates of Adams have proved the best expounders of the laws of nations, and the most eloquent advocates of the rights of neutrals. On that element, both France and England have felt the

energy of our republic—on that element, our flag has won its proudest honours, and now carries with it the renown of our gallant seamen, wherever it displays its variegated glories.

If the sun of Adams retired behind a cloud, it soon emerged to its “original brightness;” if his star was dimmed at its meridian height, like that of Dandolo, “nothing ever surpassed the brilliancy of its setting rays.” Shall we follow the sage to the scenes of private life? Shall we speak of his virtues? When an adventurous sophist proposed to pronounce a panegyric on Homer, he was rebuked, by the simple question, “has Homer faults?” But the virtues of Adams are the inheritance of his country; their example will continue to form, to strengthen, to delight, to the remotest ages! His sterling integrity, and unblemished truth, his mild benevolence, the strength of his friendship and affections, his temperance rewarded by a long and illustrious life, his love of country, strong in death, his faith in a divine religion, and his resignation to the decrees of Providence, these will be the subjects of many an aspiring strain, when the fleeting scenes which attract our interest to-day, shall pass away, and be forgotten. For classic eloquence, and nerve, as a writer, for accomplishments as a scholar, for profound acquirements as a philosophic statesman, he will ever be conspicuous in the temple of fame. In one particular, he enjoyed a rare felicity, which



in all probability will stand a solitary exception in our history for the next thousand years. If, as a patriot, he saw with delight his country advance with the rapidity of fairy land, great must have been his gratification, as a man and a parent, to leave the fortunes of that country under the guidance of his son; a son, whose virtues and abilities, had been subjected to the severest ordeal of public opinion, in the various stations which he had filled, and who was at length advanced to the highest office of his country; let not the bitterness of party feeling mingle in the cup of grief, or withhold the just tribute of respect to the chief magistrate of the nation, or refuse to condole with an affectionate son, for the loss of the best of fathers.

The name of ADAMS has become inseparably united with that of JEFFERSON, the patriot, the statesman, the philosopher, the favourite of his country. Your orator feels the poverty of his language in the attempt to do justice to his transcendent merit. His mind, of "vast unclouded scope," stretched its vision to every subject which belongs to human knowledge; his philanthropy, no less expansive, embraced every object of benevolence. His fame is confined to no age or country; he was the friend, the instructor, the legislator of the human race. He will be named with Solon, with Socrates, with Plato, with Aristotle, with Bacon. Nature, kind and beneficent mother, has cast even among the

most savage and barbarous tribes, some of those superior and privileged beings, who have sketched the first rude laws of society, and restrained the fierce and destructive passions of men; but small is the number of those resplendent geniuses, who in the enlightened periods of the world have given rise to new era in the improvements of human life, who have effected revolutions, that in the ordinary course of events could only be accomplished by the gradual progress of centuries. Such was JEFFERSON. The splendid state paper with which our political existence began, bears the impress of his mighty mind; that instrument, which has become the ornament of our halls, the guide of our councils, and the first political lesson of our youth. Had this been the first and only production of his pen, he had needed nothing more to render his name immortal. But where is the American who has filled so many arduous stations, who for an equal number of years has been so constantly employed in the most important and useful public services? Where is the man who has so successfully united the boldest speculation with practical utility? He was a luminary even among such men as Franklin, Hancock, Livingston, Witherspoon, Rush, Morris, Wilson, Chace, M'Kean, Wythe, Paine, Walton,\* Hopkin-

\* Mrs. Walton, the widow of George Walton, one of the signers of the Declaration of Independence, was present.

son, Wolcott, each of whom was a ruling star in a constellation of intellect and virtue. Even in the midst of the political tempest which swept over the land, we find him in his native state preparing the most laborious reforms, with all the calmness of Archimedes engaged in the solution of his problem. He brought the whole body of the laws of Virginia out of chaos, and reduced them to the beautiful order, which they still preserve. Every thing was great and original in his legislation; ever boldly recurring to the fountains of first principles. Every act overturned a rooted prejudice, or gave a new impulse to improvement. He was the first who established on a legislative foundation, a complete toleration in matters of religion, and which annihilated the union between church and state, whose tendency has ever been to corrupt and ruin both. This was itself a revolution. Let his name be united with that of Las Casas, as the generous advocate of the aboriginal inhabitant, who had been reduced by the false philosophy of Europe, in the scale of being, to a level with the brute. And where shall we find suitable expressions of praise of the first, the successful denouncer of the abominable traffic in human flesh, which has entailed so much misery and disgrace on civilized and Christian men? The glowing terms in which he depicted the evils of slavery, proved that as a great reformer, he was no less bold than benevolent. In that incompara-

ble production, the Notes on Virginia, where every sentence is a gem, where every chapter is a volume, in its sterling bullion, what a treasure has he left us! That volume will ever be crowned by the gratitude of America---of the new world, as the complete and triumphant vindication from the aspersions and the prejudices of the old. The vain and arrogant philosophy of Buffon, of Raynal, of Robertson, was dispelled like a mist before the rising sun, and the glowing landscape was revealed for the first time to the wise man of Europe.

As the legislator of his native state, Jefferson achieved a victory over the opinions and pride of his fellow-citizens, which scarcely yields to that of Lycurgus at Sparta. He it was, who first set the example of that Agrarian law, which, unlike that of Gracchus, was effected without violence, and was based on the truest principles of wisdom, justice and humanity. Well has it been demonstrated by Adams, that where vast disproportionate wealth accumulates in families, aristocracy is inevitable. The downfall of Rome, and of Sparta, the lamentable fate of the virtuous Gracchi, and the no less patriotic Cleomenes, are chiefly ascribable to this cause. The monopoly of the landed property in a few hands, necessarily rendered the great majority of the population a plebeian mass, without stake or interest in society, without pride, without virtue, and the fit subjects of sale and barter, between cor-



ruption and ambition. It was this which enabled Sylla to oppress his country, and Cæsar to enslave it. Through the exertions of Jefferson, the law of primogeniture was abolished, and the contrivance of entails done away—every child was made to share alike in the bounty of its parent, as it ought to be equal in his affection. The example has been imitated by every neighbouring state; but the time has not yet arrived to show the full effects of this admirable innovation. The career of wealth and honours, has been thrown open to industry and merit, wherever it may be found. The freshness and purity of society, is thus preserved by the continued renovation of its elements, like the particles of air we breathe, or the drops of water in the running stream, at which we quench our thirst.

Jefferson, like his compatriot Adams, was chosen to fill the first offices in the republic. After having been chief magistrate of Virginia, during the most trying scenes of the revolution, he was appointed one of that illustrious commission, which negotiated the treaty of peace. He was afterwards our first ambassador to Paris, where the amenity of his manners, and the elegant accomplishments of his mind, rendered him the delight of every circle, among the most polished people of Europe. There his elegant classical attainments, his profound acquaintance with every thing useful in natural history and the arts, found a theatre for display, a field



to expatiate. Perhaps it would not be hazarding too much, to say, that none of our countrymen had ever before appeared abroad, who combined so many elegant attainments, or who could hold so high a rank among the literati of that celebrated metropolis; and it must be admitted, that no individual has since done so much to elevate the character of our country, for those qualities, which belong to a refined and civilized people. Princes, and titled dignitaries of boasted ancestry, in their own assemblies were eclipsed by the noble of nature. On his return to his country, he was chosen under the newly established confederacy, as the minister and organ of the administration of Washington. In the various masterly reports, called for by the duties of his department, we view with wonder and admiration, the vast compass and force of his mind, which could, comparatively within narrow limits, collect such an amazing mass, by the power of compression, by simplification, and by lucid arrangement. Such is the report on weights and measures, that difficult problem in natural philosophy, and the higher mathematics; the reports on the fisheries and on commerce, displaying a minuteness of information, a profundity of research, and a patience of investigation, which future statesmen may look upon with astonishment, and humility. His diplomatic correspondence has been the subject of universal praise. With the Spanish, with the French and British ministers, he

maintained the rights and dignity of his country, and has given models and principles which will serve as the guide of all his successors. His elaborate and masterly vindication of the free navigation of the Mississippi, shows how profoundly versed he was in the laws of nations. As a writer, perhaps no one, since Bacon, has left so many admirable sayings, which so easily attach themselves to the mind, without the effort of memory, and may be considered as the steps of reason. This is, indeed, the striking peculiarity of all his public and private writings.

After having filled, like Adams, the office of vice president, he was also called to the highest station in the government of a free people. It would require a volume to give the history of his administration. It does not suit the occasion to depict the excitements and angry feelings which unhappily distracted our republic at that period; these must be left to the calm and unbiassed contemplation of later times. Suffice it to say, that it would be the height of injustice to render the leaders of the great parties of the day, responsible for all the imprudence, and folly, and malignity of their followers. Perhaps impartial history may decide, that both Adams and Jefferson were assailed by the poisoned shafts of detraction; that the partizans of both were alarmed by imaginary dangers, and exasperated by groundless recriminations. Perhaps errors of judg-

ment may be pointed out, to show that the wisest are fallible ; that even Jefferson, under the delirium of party excitement, may have suffered the expediency of the hour to outweigh those truths which are eternal. And yet, the accusations of aristocratic designs, or disorganizing jacobinism, of French or British influence, were perhaps no more than the watch-words and war-cries of dissention. But these recriminations, so little calculated to elevate the character of our country, ceased to be heard the moment those two great nations ceased, by their conflicts, to convulse the world. But at that time Jefferson was seen rising serenely, above the tempest which surrounded him ; he seized the helm amid the most appalling distractions, awakened by his well known voice our hopes and our confidence. He called on his countrymen *to forget the past*—to repair to their posts, and as FEDERALISTS, as REPUBLICANS, to devote themselves to the happiness of their common country. The sentiment was magnanimous, and if he erred in his administration, he has at least prescribed a rule by which his error may be tried. But I will not dwell on the particulars of that administration, whose RESULTS were so happy, so successful, so glorious to the nation. One only act will I select, but sufficient in itself to render that administration ever memorable in its annals. If Cæsar and Pompey deserved statues and triumphs from their grateful countrymen, for having enlarged

the bounds of the empire in Europe and Asia, at the head of those veteran armies, which were afterwards the instruments to crush the liberties of Rome, what rewards have we reserved for Jefferson, who more than doubled the extent of our republic, without arms and without blood, and so far from endangering, procured for our liberties, additional security and strength? Without the great Mississippi and its outlet to the sea, could we have retained the mighty states which have arisen on its tributary waters, or could we have prevented the advance of a deadly enemy into the very bowels of the land? The universal consternation and dismay, which were felt a few years ago, at the dangers which threatened that portion of the republic, sufficiently proved at what a price we estimated its value.

Let us contemplate the *sage of Monticello* in the retirement of private life. Become the ORACLE of his country, but unlike that of Delphi, whose shrine was enriched by its votaries, his abode was the scene of open-hearted generosity, of noble hospitality, and the fountain of charity and benevolence. We find him in this retreat, still consulted on whatever might tend to advance the prosperity of the republic. We find him employing the precious remains of a well spent life, in fostering institutions of learning; convinced that the torch of science must illumine the path of liberty. His house was the Mecca



of the votary of wisdom, of the learned and ingenious of every country. The distinguished foreigner who visited our shores, scarcely thought he had seen America, until he had seen Jefferson. His delightful conversation, his admirable equanimity of mind, the undeviating regularity of his life, his patriarchal age, his profound learning, the various and interesting scenes of which he had been a witness, or an actor, rendered him an object, "worth a voyage across the Atlantic," to visit. But when at last the fatal sisters appeared to cut short "the thin spun thread of life," he prayed that it might be prolonged to the "great and glorious day" of independence; the prayer was granted, and uttering his favourite quotation, "now, O Lord! let thy servant depart in peace,"

—————"He sunk to rest,  
With all his country's wishes blest."

ADAMS and JEFFERSON are gone—Let us mourn the sad reality of their loss—let us rejoice in the glory of their departure—let us condole with that solitary and venerable man, the companion of their glory, CARROLL, the model of the accomplished gentleman, the scholar, and the patriot. Washington, Franklin, Jefferson, Adams, have passed to another, and a happier existence, but their names will be associated here, as the FOUNDERS OF A MIGHTY REPUBLIC. Washington, by the suffrage



of all posterity, and of the universe, has been assigned the first place; not because he wielded the sword, and crowned the great work with success, but because his virtues as a citizen, his abilities as a statesman, his authority as a magistrate, his god-like purity and disinterestedness as a patriot, placed him beyond the reach of envy, of rivalry, of competition. Nor should we conclude, that because Adams and Jefferson have not been seen at the head of legions, they were destitute of the courage and capacity for command; such minds cannot be allied to fear, and those who ruled the destinies of nations, might have commanded armies.

We may seek in vain through the whole range of history, for a parallel to the lives and deaths of Adams and Jefferson. It would have been remarked as extraordinary, if any one of our revolutionary worthies had departed amid the glory of this anniversary; still more, if that one had been instrumental in bringing about the great event; but when it shall be told, that both the author and the advocate of the declaration, so pregnant with the fate of unborn millions, departed on that day, after having lived the exact period of half a century from its date, it will require all the weight of cotemporary evidence, to place it on the records of history, and all the faith of posterity to give it credit. It was natural that the minds of both, should linger upon that most brilliant moment of their lives, *and that*

*it should be the last spot of earthly vision to fade from their view;* but that a secret sympathy should exist between their kindred spirits, calling them to wing their flight to the regions of immortality at the same moment, is a circumstance at which we must pause, and adore the inscrutable designs of Providence.

To their children, for we may now call them our fathers, it is a pleasing reflection, that if ever for a moment, the warm and sincere friendship, which had commenced with the morning of our liberties, had been clouded by the demon of party, long before their deaths, it had been renewed into the most generous ardour, beyond the power of malevolence to interrupt. In the lives of these great men, the historian will delight to trace the numerous points of coincidence. They were both educated in the profession of the law, a profession, which, in a free country, in a government of laws, and not of men, when liberally pursued, deserves to be considered as the guardian of its liberties. Before our revolutionary contest, they had both been engaged in preparing the minds of their countrymen, for the separation, and with Franklin, were probably among the first to foresee its necessity, and to pursue a systematic plan for its accomplishment. As members of the first congress, the one from the principal colony of the north, the other of the south, they took the lead in bringing forward and sustaining

the important measure: they displayed at the same time those characteristics, which, according to the author of *Anacharsis*, constitute true courage—they knew their danger, feared it, yet encountered it with unshaken firmness. To both were confided the most important trusts abroad; first, to negotiate peace and amity with the nations of Europe, and next, as the first representatives of our government, at the two principal courts; Jefferson to that of Paris, and Adams to that of London. They both filled in succession the second station in the government; and were both afterwards elevated to the first. For many years after their retirement, they were both the objects of peculiar veneration to their countrymen. They saw, in the simple retirement of private citizens, those distinguished men, who had been the chief magistrates of a great people, and who had filled a station more dignified than that of kings. In their great age, we are reminded of the celebrated philosophers of Greece; and much is to be ascribed to the power of that intellect, which they preserved unimpaired, so highly cultivated, so habitually exercised; whose embalming influence almost controlled and retarded the decay of nature. The closing scene of their lives rendered the coincidence almost perfect. But the doom of man is inevitable. If virtues, and talents, and great services, could secure immortality on earth, our WASHINGTON had still lived. Let us not then repine at

the unvarying laws of nature, and of nature's God, which have created the vicissitudes of day and night, the changes of the seasons, and have appointed a time for every living thing to die. Under the guidance of hope and faith, let us keep in view the celestial light, which, if steadily pursued, will conduct us safely through this vale of trouble and disappointment, to the regions of happiness and immortality, where we shall meet again with those whom we esteemed, and loved, and venerated, on earth. O! illustrious names OF WASHINGTON, FRANKLIN, JEFFERSON, ADAMS! delightful to every American ear—dear to humanity—ever living in the remembrance of posterity! Cities may disappear---empires may fall---monuments may be crumbled into dust---but unless the light of civilization and science shall be extinguished, by an eternal night of barbarism, your fame and your honours shall endure FOR EVER.

## AN ORATION

DELIVERED ON THE 4TH OF JULY, 1779,

BY

H. H. BRACKENRIDGE,\*

In the German Calvinist Church, Philadelphia,

*In commemoration of those who had fallen in the contest.*

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It is the high reward of those who have risked their lives in a just and necessary war, that their names are sweet in the mouths of men, and every age shall know their actions. I am happy in having it in my power before this assembly, to speak of those who have risked their lives in the war of America. I know my abilities rise not to a level with so great a subject, but I love their memory, and it is my hope, that the affection which I feel, will be to me instead of eloquence, and give me warm words to advance their praises.

I conceive it as the first honour of these men,

\* My father was chaplain of a regiment, to which he often preached. I have seen six of his sermons published in a pamphlet, but they are now lost. He accompanied his regiment in the battle of Brandywine.



that, before they engaged in the war, they saw it to be just and necessary. They were not the vassals of a proud chieftain, rousing them, in barbarous times, by the blind impulse of attachment to his family, or engaging them to espouse his quarrel by the music and entertainments of his hall. They were themselves the chieftains of their own cause, highly instructed in the nature of it, and from the best principles of patriotism, resolute in its defence. They had heard the declaration of the court and parliament of Great Britain, claiming the authority to bind them in all cases whatsoever. They had examined this claim, and found it to be, as to its foundation, groundless; as to its nature, tyrannical; and in its consequences destructive to the peace and happiness of both countries. On this clear apprehension and decided judgment of the cause, ascertained by their own reason, and collected from the best writers, it was the noble purpose of their minds to stand forth and to assert it, at the expense of fortune, and at the hazard of their lives.

These brave men were not soldiers by profession, bred to arms, and from habit of military life attached to it. They were men in the easy walks of life; mechanics of the city, merchants of the counting house, youths engaged in literary studies, and husbandmen, peaceful cultivators of the soil. Happy in the sociability and converse of the town, the simplicity and innocence of the country village, or

the philosophic ease of academic leisure, and the sweets of rural life, they wished not a change of these scenes of pleasure for the dangers and calamities of war. It was the pure love of virtue and of freedom, burning bright in their bosoms, that alone could engage them to embark in an undertaking of so bold and perilous a nature.

These brave men were not unacquainted with the circumstances of their situation, and their unprepared state of war. Not a bayonet was anvilled out, not a fire-arm was in their possession. No redoubt was cast up to secure the city, no fort was erected to resist invasion, no gun mounted on the battery, and no vessel was launched upon the stream.

The power of Britain, on the other hand, was well known, and by the lightning of her orators, in a thousand writings and harangues, had been thrown in full force upon their minds. They were taught to believe her, (as indeed she was,) old in arts and in arms, and enriched with the spoils of a thousand victories. Embraced by the ocean as her favourite, her vessels floated on every sea. Abounding in men, her armies were in full force, her fleets were completely manned, her discipline was perfect, and the spirit of her enterprise by sea and land had every where crowned her with success.

The idea of resistance to Great Britain, was indeed great—but the mighty soul of the patriot

drank it in, and like the eagle on the mountain top, collected magnanimity from the very prospect of the height from which he meant to soar : like the steed who swallows the distant ground with his fierceness, he attempts the career, and proves himself upon the race.

The patriot quits his easy independent walk of life, his shop, his farm, his office, and his counting house, and with every hope and every anxious thought, prepares himself for war. The materials of gunpowder are extracted from the earth ; the bayonet is anvilled out, the fire-arm is manufactured in the shop, the manual exercise is taught, the company is formed in battalion, the battalion is instructed to manœuvre on the field, the brigade is drawn forth, and the standard of defiance is planted on the soil.

Shall I mention the circumstances of the day when the sword was drawn, and the first blood was shed ? and shall I trace the progress of the war, in the course of five campaigns ? The narration would require the space of an entire day. I can mention but the sum of things, and only tell you, that the inroad of the foe has been sustained upon the plain, and the forward and impetuous bands have been driven over the disdaining ground which they had measured in advance. The hill has been defended, and the repulsed and rallying foe has been taught to understand, that the valour of America was wor-

thy of the cause which her freemen had espoused. The wilderness has been surmounted in the march. It has been fought foot to foot, and point to point, in skirmishes, and night surprises, and in pitched battles, with alternate hope and dubious success. The enemy beaten in one state, has retired to a second, and beaten in the second, has returned to the first; beaten in every state, he has sought the water, and like a sea monster rolling to the deep, has washed his wounds in the brine of ocean. Rising from the ocean, he has sought the land, and advanced with slow and suspicious step upon the hostile territory. War is again arisen, and it has been fought from spring to autumn, and from autumn to spring, through the heat of summer and the inclemencies of winter, with unabated ardour and unshaken perseverance. What tract of our country has not been marked by the vestiges of war? What ground has not been cut with trenches? What hill has not been covered with redoubts? What plain has not been made the scene of the engagement? What soil of our whole earth has not been sowed with ball?

These have been the toils of the heroes of our army; but the brave men, whom we this day commemorate, have added to their toils the loss of life. They have fallen in the contest. These of them, in the long and laborious march; these, by the fever of the camp; those have fallen, when advancing on

the enemy, they have received the bayonet in their breasts, or high in hope, and anxious of victory, they have dropt by the cannon, or the musket-ball.

For what cause did these brave men sacrifice their lives? For that cause, which, in all ages, has engaged the hopes, the wishes, the endeavours, of generous men—the *cause of liberty*. LIBERTY! thou art indeed invaluable—the source of all that is good and great upon the earth! For thee, the patriot of America has drawn his sword, and has fought, and has fallen.

What was in our power we have done with regard to what was mortal of these men: we have paid them military honours; we have placed them in their native earth; and it is with increasing veneration we view their tombs upon the furzy glade, or on the distant hill. Ask me not the names of these men? The muses shall tell you of them, and the bards shall woo them to their songs. The verse that shall embrace the name of one of them, shall become immortal. Their names will be read with those of Pelopidas, Epaminondas, and be registered among the worthies of the world. Posterity shall quote them for parallels, and for examples. When they shall desire to dress the future hero with becoming praises, they will say he was as gallant and distinguished in his early fall as Warren; prudent and intrepid as Montgomery; faithful and generous as Macpherson; he fell in the bold and resolute ad-



vance, like Haslet, and like Mercer; he saw the honour which his arms had acquired, and fainted in the arms of victory, like Herkimer; having gallantly repulsed the foe, he fell, covered with wounds, in his old age, like Wooster.

The names of these brave men shall live, and the animated earth shall be sensible of praise, where their bodies are deposited. HILL OF BOSTON, where the God of arms first kindled the patriot flame! Here the muses shall observe the night, and hymn heroic acts, and trim their lighted lamps to the dawn of morning; the little babbling, mystic brook, shall hear the melody, and stealing, with silver foot, shall tell it to the ocean. Hills within the prospect of York city, where the enemy, rejoicing at his early strength, adventured and fought, or where, refusing the engagement, he fled with precipitation to his ships! On you, the tomb of the hero shall be seen, while fancy walking around, covers it with shades. Ground in the neighbourhood of this city, where the stranger shall inquire the field of battle, and the citizen shall say, with conscious pride, as if the honour was his own, this is the tomb of Witherspoon; that is the ground where Nash fell! Plains washed by the Ashly and the Cooper, and before the walls of Charleston! Here has the hero fallen, or rather has he risen to eternal honour, and his birth-place shall be immortal. HIS FAME, LIKE A VESTAL LAMP, IS LIGHTED

UP: IT SHALL BURN, WITH THE WORLD FOR ITS TEMPLE, AND THE FAIR ASSEMBLIES OF THE EARTH SHALL TRIM IT WITH THEIR PRAISE.

Having paid that respect to the memory of our patriots which the annual return of this day demands, it remains, that we sooth the grief of those who have been deprived of a father, bereaved of a son, or who have lost a brother, a husband, or a lover, in the contest. Fathers, whose sons have offered up their lives, it is yours to recollect, that they were given to them for the service of their country. Fathers! dismiss every shade of grief--receive consolation from being the progenitor of him who is enrolled with the heroes of his country. Sons! whose heroic fathers have early left you, and in the conflicts of the war have mixed with departed heroes, be congratulated on the fair inheritance of fame, which you are entitled to possess. If it be at all lawful to array ourselves in borrowed honour, surely it is best drawn from those who have acted a distinguished part in the service of their country. If it be at all consistent with the sentiments of philosophy and reason, to boast of lineal glory, surely it is most allowable in those who boast of it as flowing from such a source. We despise the uninstructed mind of that man, who shall intrude upon our ears, the ideas of a vain, ancestral honour: but we love the youth, and transfer to him the reputation of his father, who, when the rich and

haughty citizen, shall frown upon him, as of ignoble rank, shall say, "I HAD A FATHER WHO HAS FALLEN IN THE SERVICE OF HIS COUNTRY."

When after-time shall speak of those who have risen to renown, I will charge it to the golden-winged, and silver-tongued bards, that they recollect, and set in order, every circumstance; the causes of the war, early and just exertions, the toils, hazardous achievements, noble resolutions, unshaken perseverance, unabated ardour, hopes in the worst of times, humanity to an enemy, in the midst of triumphs for victory. All these, will I charge it, that they recollect and set in order, and give them bright and unsullied to the coming ages. The bards will hear me, and you, my countrymen, shall go down to posterity with exceeding honour. Your fame shall ascend on the current of the stream of time. It shall play with the breezes of the morning. Men at rest, in the cool age of life, from the fury of a thousand wars, finished by their fathers, shall observe the spreading ensign. They shall hail it, as it waves, with variegated glories, and feeling all the warm rapture of the heart, shall give their plaudit from the shores.

**WESTERN ANTIQUITIES,**

COMMUNICATED IN A LETTER TO THOMAS JEFFERSON,

BY

**H. M. BRACKENRIDGE,**

AND

*Read before the Philosophical Society of Philadelphia, 1813.*

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*Baton Rouge, July 25, 1813.*

SIR,

From a knowledge that research in the history of the primitive inhabitants of America, is one of your favourite amusements, I take the liberty of making this communication. My attention to the subject, was first awakened on reading, when a boy, the observations contained in the "Notes on Virginia," and it has become, with me, a favourite theme of speculation. I often visited the mound, and other remains of Indian antiquity, in the neighbourhood of Pittsburgh, my native town, attracted by a pleasing interest, of which I scarcely knew the cause, and afterwards read, and heard with delight, whatever related to these monuments of the first, or rather earlier, inhabitants of my native

country. Since the year 1810 (without previously intending it) I have visited almost every thing of this kind, worthy of note on the Ohio and Mississippi; and from examination and reflection, something like hypothesis, has taken the place of the vague wanderings of fancy. The following is a sketch of the result of those observations.

I. Throughout, what is denominated by Volney, the valley of the Mississippi, there exist the traces of a population far beyond what this extensive and fertile portion of the continent, is supposed to have possessed: greater, perhaps, than could be supported of the present white inhabitants, even with the careful agriculture practised in the most populous parts of Europe. The reason of this, is to be found in the peculiar manners of the inhabitants by whom it was formerly occupied; like those of Mexico, their agriculture had for its only object their own sustenance; no surplus was demanded for commerce with foreign nations, and no part of the soil, susceptible of culture, was devoted to pasturage; yet, extensive forests filled with wild animals would still remain. The aggregate population of the country might be less, but that of particular districts much greater. We must, in this way, account for the astonishing population of the vale of Mexico, when first known to the Spaniards; perhaps equal to any district of the same extent.\* The prodigious

\* See Humboldt, Vol. II. page 127.



population of Owyhee, and Otaheite, must be accounted for in the same way. There are certainly many districts on the Ohio and Mississippi equally favourable to a numerous population. When I contemplated the beauty and fertility of those spots, I could scarcely believe it possible, that they should never have supported a numerous population; such a fact would form an exception to what has usually occurred, in every other part of the globe.

II. In the valley of the Mississippi, there are discovered the traces of two distinct races of people, or periods of population, one much more ancient than the other. The traces of the last are the most numerous, but mark a population less advanced in civilization; in fact, they belong to the same race that existed in the country when the French and English effected their settlements on this part of the continent: but since the intercourse of these people with the whites, and their very great diminution in numbers, many of their customs have fallen into disuse. It is not more than a hundred and twenty years, since the character of the population, which left the traces of the second period, underwent a change. The appearances of fortifications, of which so much has been said, and which have been attributed to a colony of Welch, are nothing more than the traces of palisaded towns or villages. The first travellers mention this custom of surrounding their towns with palisades; the earth was

thrown up a few feet, and pickets placed on the top. I have seen old volumes in which they are represented in the engravings.\* The Arikara and Mandan villages are still fortified in this way. The traces of these are exceedingly numerous in the western country; I should not exaggerate if I were to say that *five thousand* might be found. Some of them enclose more than a hundred acres. From some cause or other (and we know that there are enough which might suffice to effect it,) the population had been greatly diminished immediately before we became acquainted with them; and yet Charlevoix mentions a town of the Mascutin tribe (at present incorporated with the Kickapoos,) containing a thousand families! The barrows, or general receptacles of the dead, such as examined by yourself, may be classed with the palisadoed towns, though they are much more numerous; they are in fact to be found in almost every cornfield in the western country. The tumuli or mounds, are often met with, where there is no appearance of palisadoed villages or fortifications, or of barrows.

III. The first and more ancient period, is marked by those extraordinary tumuli or mounds. I have reason to believe that their antiquity is very great.

\* These are to be seen in many old volumes in the present library of congress, which contains the most valuable collection of books on America to be found in any part of the world.

The oldest Indians have no tradition as to their authors, or the purposes for which they were originally intended; yet they were formerly, I might almost say instinctively, in the habit of using them for one of the purposes for which they were at first designed, to wit, as places of defence. The old chief, Du Coin, told Mr. Rice Jones that the mounds in the American bottom, had been fortified by the Kaskaskias in their wars with the Iroquois. An old work by Lafitau, a jesuit, which I met with at New Orleans, contains a curious plate, in which one of these mounds, fortified by palisades on the top, and large beams extending to the bottom, is assaulted by enemies. These tumuli as well as the fortifications, are to be found at the junction of all the considerable rivers, in the most eligible positions for towns, and in the most extensive bodies of fertile land. Their number exceeds perhaps *three thousand*; the smallest not less than twenty feet in height, and one hundred in diameter at the base. Their great number, and the astonishing size of some of them, may be regarded as furnishing, with other circumstances, evidence of their antiquity. I have been sometimes induced to think that at the period when those mounds were constructed, there existed on the Mississippi, a population as numerous as that which once animated the borders of the Nile, or of the Euphrates, or of Mexico and Peru.

IV. The most numerous, as well as the most con-

siderable of these remains, are found precisely in the part of the country where the traces of a numerous population might be looked for, to wit, from the mouth of the Ohio (on the east side of the Mississippi) to the Illinois river, and on the west side from the St. Francis to the Missouri. I am perfectly satisfied that cities similar to those of *ancient Mexico*, of several hundred thousand souls, have existed in this part of the country. Nearly opposite St. Louis there are the traces of two such cities, in the distance of five miles, on the bank of the Cohokia, which crosses the American bottom at this place.\* There are not less than one hundred mounds, in two different groups; one of the mounds falls little short of the Egyptian pyramid Mycerius. When I examined it in 1811, I was surprised that this stupendous monument of antiquity should have been unnoticed by any traveller: I afterwards published an account in the newspapers at St. Louis, detailing its dimensions, describing its form, position, &c. but this, which I thought might almost be considered a discovery, attracted no notice: and yet I stated it to be eight hundred paces in circumference (the exact size of the pyramid of Asychis) and one hundred feet in height. The mounds at Grave

\* See the chapter on the Antiquities of the Valley of the Mississippi, in the "Views of Louisiana," by the author of this Memoir, p. 181. Pittsburg edition, 1814.

Creek and Marietta are of the second or third class. The mounds at St. Louis, at New Madrid, and at the commencement of Black River, are all larger than those of Marietta. The following is an enumeration of the most considerable mounds on the Mississippi and on the Ohio; the greater part I examined myself with such attention as the short time I had to spare would permit.

1. At Great Creek, below Wheeling.
2. At Pittsburgh.
3. At Marietta.
4. At Cincinnati.
5. At New Madrid—one of them 350 feet diameter at the base.
6. Bois Brule bottom, fifteen miles below St. Genevieve.
7. At St. Genevieve.
8. Mouth of the Marameeck.
9. St. Louis—one with two stages, another with three.
10. Mouth of the Missouri.
11. On the Cohokia river—in two groups.
12. Twenty miles below—two groups also, but the mounds of a smaller size—on the back of a lake, formerly the bed of the river.
13. Near Washington, (M. T.) 146 feet in height.
14. At Baton Rouge, and on the bayou Manchac



—one of the mounds near the lake is chiefly composed of shells—the inhabitants have taken away great quantities of these for the purpose of making lime.

15. The mound on Black River, of two stages, with a group around it.

At each of these places there are groups of mounds; and at each there probably once existed a city. On the other considerable rivers which are tributary to the Ohio and Mississippi, in Kentucky, Tennessee, state of Ohio, Indiana Territory, &c. they are equally numerous. But the principal city and centre of population was between the Ohio, Mississippi, Missouri, and Illinois. I have been informed, that in the plains between the Arkansa and St. Francis, they are numerous, and some very large. They resemble the Teocalli, in these important features, 1. In their positions the cardinal points are observed with considerable accuracy. 2. The larger mounds have several stages. 3. In every group there are two mounds much larger than the others. 4. The smaller mounds are placed around symmetrically. A closer examination would show a resemblance in other particulars. It is doubted by Humboldt whether advantage had not been taken of some natural rise, in the formation of the pyramid of Cholula; with respect to the mound of Cohokia, there can be no doubt, for it stands in the

midst of alluvium, and there is no natural hill nearer than two miles.\*

Such are the appearances of antiquity in the western country, which I consider as furnishing proof of an ancient and numerous population. The resemblance to those of New Spain would render probable the existence of the same arts and customs; perhaps of an intercourse. The distance from the large mound on Red river, to the nearest in New Spain, is not so great but that they might be considered as living in the same country.

From the description of the *Adoratorios*, as they are called, it appears highly probable that the mounds on the Mississippi were destined for the same purposes. Solis tells us, that every considerable place had a number of them, upon which a kind of tower was erected, and which gave rise to the belief of those who first visited the coast of New Spain, that they had seen cities with numerous steeples;† from which circumstance they bestowed upon it the name of their native country. The four

\* See the account of the Teocalli of New Spain, by Humboldt, pages 16, 41, 44, 123, 170, &c. vol. II. New York edition, 1811.

† Dr. Robertson, who is disposed to lessen every thing American, and to treat with contempt unworthy of a philosopher, all their arts and advancement in civilization, attributes this to the imaginations of the Spaniards, inflamed with the spirit of Quixotic adventure.

great cities to which the general name of Mexico was given, contained two thousand of these *Adoratorios* or Teocalli; at the first glance this vast population, equal perhaps to London or Paris, appeared to be crowned with innumerable towers and steeples. Architecture was perhaps too much in its infancy to enable them to build to any great height; a mound was therefore raised, and a building erected on the top. It was in this way the temple of Belus at Babylon was erected, and the Egyptian pyramids of the second class, which are solid, and probably the most ancient. Besides being places of adoration, the Teocalli also served as fortresses; they were usually the last places, to which the inhabitants of the cities conquered by Cortez, resorted, after having been driven from every other quarter. They were enabled from the position, form, and the tower on the top, to defend themselves in these situations to great advantage. Placed from the bottom to the top of the mount, by gradations above each other, they appeared (as Solis in his animated style expresses it) to constitute “a living hill;” and at first, judging only from the experience of their own wars, they fancied themselves unassailable.

From the oldest book extant, the Bible, we see exemplified in numerous instances, the natural predilection for resorting to *high places*, for the purpose of worship; this prevailed amongst all nations,

and probably the first edifice dedicated to the Deity, was an elevation of earth, the next step was the placing a temple on it, and finally, churches and mosques were built with steeples. This having prevailed in all countries, may be considered as the dictate of nature. The most ancient temples of the Greeks were erected on artificial or natural elevations of earth; at the present day, almost every part of Europe and Asia, exhibits these remains of tumuli, the rudest, though perhaps the most lasting of human works.\* The mausoleum generally holds the next place to the temple; and, what is remarkable, all nations in their wars have made the last stand in the edifices consecrated to their gods, and near to the tombs of their ancestors. The *Adoratorios* of New Spain, like all works of the kind, answered the three purposes, of the temple, the fortress, and the mausoleum. Can we entertain a doubt but that this was also the case with those of the Mississippi?

The antiquity of these mounds is certainly very great; this is not inferred from the growth of trees, which prove an antiquity of a few centuries, but from this simple reflection; a people capable of works requiring so much labour, must be numerous, and if numerous, somewhat advanced in the

\* See Appendix to Volney's View of America, Clark's Travels in Russia, &c.

arts ; we might therefore look for works of stone or brick, the traces of which would remain for at least eight or ten centuries. The great mound of Cohokia, is evidently constructed with as much regularity as any of the Teocalli of New Spain, and was doubtless cased with brick or stone, and crowned with buildings ; but of these no traces remain. Near the mound at St. Louis, there are a few decaying stones, but which may have been casually brought there. The pyramid of Papantla, in the northern part of the Intendency of Vera Cruz, unknown to the first conquerors, and discovered a few years ago, was still partly cased with bricks. We might be warranted in considering the mounds of the Mississippi more ancient than the Teocalli : a fact worthy of notice, although the stages are still plain in some of them ; the gradations or steps have disappeared, in the course of time the rains having washed them off. The pieces of obsidian or flint, are found in great quantities near them, as is the case with the Teocalli. Some might be startled if I should say that the mound of Cohokia is as ancient as those of Egypt ! The Mexicans possessed but imperfect traditions of the construction of their Teocalli ; their traditions attribute them to the Toultees, or to the Olmecs, who probably migrated from the Mississippi.

Who will pretend to speak with certainty as to the antiquity of America—the races of men who



have flourished and disappeared—of the thousand revolutions, which, like other parts of the globe, it has undergone? The philosophers of Europe, with a narrowness and selfishness of mind, have endeavoured to depreciate every thing which relates to it. They have called it the *New World*, as though its formation was posterior to the rest of the habitable globe. A few facts suffice to repel this idea:—the antiquity of her mountains, the remains of volcanoes, the alluvial tracts, the wearing away of cataracts, &c., and the number of primitive languages, greater perhaps than in all the rest of the world besides.

The use of letters, and the discovery of the mariner's compass, the invention of gunpowder and of printing, have produced incalculable changes in the old world. I question much, whether, before those periods, comparatively recent, there existed, or could exist, nations more civilized than the Mexicans, or Peruvians. In morals, the Greeks and Romans, in their most enlightened days, were not superior to the Mexicans. We are told that these people sacrificed human beings to their gods! Did not the Romans sacrifice their unfortunate prisoners to their depraved and wicked pleasures, compelling them to kill each other? Was the sacrifice of Ephigenia, to obtain a favourable wind, an act of less barbarity than the sacrifices by the Mexicans of their prisoners on the altar of their gods? The

Peruvians were exempt from these crimes---perhaps the mildest and most innocent people that ever lived, and in the arts as much advanced as were the ancient Persians or Egyptians; and not only in the arts, but even in the sciences. Was ever any work of the old world superior to the two roads from Quito to Cusco?

Pardon me, sir, for troubling you with this long, and perhaps tiresome letter, dictated probably by the vanity of personally communicating my crude theories to one who holds so distinguished a place in that temple of science, which belongs to every age and every country.

With sentiments of the highest respect,

I am, Sir,

Your most obedient,

Humble servant,

H. M. BRACKENRIDGE.

LETTER  
ON THE  
**CULTURE OF LIVE OAK,**  
TO THE SECRETARY OF THE NAVY.

BY  
**H. M. BRACKENRIDGE.**

*St. Rosa, 1st June, 1828.*

SIR,

In compliance with your request, I now communicate some of my ideas on the subject of the culture of the *live oak*, and the mode of employing, to the best advantage, the public land to be reserved at this place.

The *live oak* (*quercus virens*) is one of the most valuable timber trees our country produces, and is unequalled for the frames of vessels. There is no wood superior, if there be any equal to it, in strength, buoyancy and durability. It is found principally south of latitude 34°, along our Atlantic coast, but its favourite region is the southern part of the coast of South Carolina, Georgia, and of Florida, and in the latter only it is now found in sufficient quantities to be worth the attention of the government. Michaud, the botanist, is of opinion, that,

in the course of fifty or sixty years, this valuable timber tree will entirely disappear, on account of the greatness of the demand for it, and the limited quantity to be found. The *live oak* tree at a distance, has the appearance of a large apple, or pear tree; its spreading and picturesque top, and delicate olive-shaped leaves, of a deep shining green, render it extremely beautiful. It is one of the most magnificent and delightful shade trees in the world, but it is not found in continuous forests of any extent, like other species of the oak. It loves solitary and detached situations; it requires a free circulation of air, and must have ample space to extend its prodigious horizontal branches. One of these branches which I measured some years ago, I found seventy-five feet in length, and the extremity was so low, that I could reach it from the ground. From this peculiar habit, it rarely attains its full size any where except on the margins of rivers, on the shores of the bays and sounds, and on the edges of the open ponds, seldom extending any distance back, which I consider entirely owing to the being crowded by other trees, and consequently to the want of proper space; for there are instances of beautiful groves of twenty or thirty acres, on the coast of Georgia, where they have been nursed with care, and allowed sufficient room to spread. Twenty or thirty trees to an acre are as many as ought to be allowed to remain, in order to come to full perfection,

although they might be permitted to grow closer together, for some purposes; but in order to form those curious and valuable crooks, so much esteemed for knees or fetlocks, and other timbers of vessels, it is necessary that they should be permitted to expand as much as possible. For beams, stems, stern posts, transoms, top timber, and bow timber, it will be an advantage to grow somewhat closer in order to form longer and larger bodies. But a vessel would require three or four hundred of the smaller pieces, and of the others but a limited number; for each ship but one stem and stern post is required, although these are generally in two pieces. The *live oak* is naturally inclined to spread, as is in fact the case with most trees growing in a deep, loose, sandy soil; while in a rich and firm loam, they shoot up into tall and vigorous stems with short lateral branches. It is on account of its requiring so much space, that in the natural forests, these trees are rarely met with in groves of more than fifty or a hundred trees, and that usually on some narrow point of land, with an open space, or water, on each side.

When the *live oak* is cut down, it is not necessarily destroyed; that is, the stump does not *rot or die*; and even where the roots are dug up (and I am told they are the most valuable part of the tree) like the chesnut or locust, the roots that remain in the ground, or the stump of the tree, send up vigor-



ous shoots of such rapid growth as to form large trees in a third of the time which was required by the parent stem. Under favourable circumstances, fifty or sixty years from the acorn, I should think sufficient for *live oak* to attain its growth. Some of the finest trees I have seen, are found on the ruins of the old forts and villages in the Tallahassee country, frequently growing out of masses of bricks; and as those settlements were destroyed in 1706, we may fix with certainty the longest period which it required for them to attain their present enormous magnitude. These have evidently been in a state of decay for half a century, owing to the close forests of other trees which have grown up around and overtopped them. They at first, no doubt, occupied open spaces, and to all appearance, must have attained their present size in fifty or sixty years. The *live oak* being an evergreen, does not, like others, show its age by the concentric circles, for it grows in winter as well as in summer. I should think, that a tree of fifty years old from the acorn, ought to be fit for most uses in ship building—although after it attains a certain size, in a shorter period, its progress is more slow, if deprived of the necessary space and air. I have examined a tree, growing in a yard near Pensacola, the trunk of which is now at least two feet in diameter; and which the owner told me was so small twenty years ago, that he bent the two principal

limbs with his hands, and fixed them with stakes, so as to give them a particular inclination. In the neighbourhood of Charleston I have seen noble trees, which I was told had been planted since the revolutionary war. A number of young *live oaks*, which I found growing around the spot where I built my house, have increased at least *one-third* in size within six years, from being carefully pruned and freed from the encroachment of other trees. I can therefore speak with confidence derived from experience, on the advantage of nursing those which we find already set by the hand of nature, for they often have the advantage of a root a hundred or perhaps five hundred years old. In the neighbourhood of a *live oak* grove there are always thickets of young plants which have sprung from the acorn, or from the roots of trees cut down, or gone to decay—these thickets are so close as to form impervious hedges, and it is to such places I should look for plants to set out elsewhere, or to thin out and cultivate those already growing. The only use in planting acorns is to form nurseries, and here are natural nurseries of millions of young trees, from five to fifteen years old.

I am acquainted with no forest tree that improves more rapidly by attention and care than the *live oak*; and those which have been nursed for shade are universally found more valuable than those which grow spontaneously, particularly as to the

soundness of the timber, owing principally to their roots being kept clear from bark or litter, which have a tendency to cause rotten places at the foot of the tree, or to afford material for the fires, which occasionally pass through the woods. The pruning the lower limbs, also, when they have a tendency to decay, must contribute much to preserve the trunk sound, and in the young ones this operation is indispensable where it is desirable that the trunk shall not be low, the *live oak* being naturally inclined to form very short trunks, in length not more than six or eight feet, before it is lost in large branches. In fact, by proper pruning, the tree would be made to assume almost any shape, and crooks, and smaller pieces might frequently be lopped off without any material injury to it. An old Spanish ship-carpenter, who had not been at this spot for ten or fifteen years, expressed his astonishment to me the other day, at the appearance of the large *live oaks* here, which, he told me, within his recollection had almost been stripped naked of limbs for crooks, but they had since formed others of such a size as scarcely to show where they had been cut. The dead trunk of a *live oak*, will stand half a century without decay; and the place where a limb has been cut off, will look perfectly sound for years---in fact, the wood appears almost incorruptible. In situations not favourable to the growth of the tree, it will no doubt remain a

long time without making much progress; moist situations, in general, suit it best---some of the finest I have seen, grew on the edge of ponds, where their roots must have been continually in water; and even where they grow on high situations, I have found, in digging wells, that their roots had penetrated some twenty or thirty feet in pursuit of moisture.

Having given this brief sketch of the natural history of the *live oak*, I shall proceed to the subject to which you have been pleased to call my attention.

This point, or tongue of land, is certainly the most advantageous that could possibly be selected, for the purpose of making a fair experiment of the cultivation or preservation of the *live oak*. The weight of the wood is so great, that it will not bear land transportation, but for very short distances; the plantation ought, therefore, to be near the coast, and being in the immediate vicinity of the navy yard, the value and adaptation of almost every tree, can be known; on this narrow peninsula, the land transportation need not exceed three-quarters of a mile. At present, *live oak* has to be culled and collected from a variety of places, at a multiplied cost, whereas, by having a large plantation, every kind of timber might be met with in a small space; and this spot, being so completely detached and without inhabitants, will be readily placed under the complete control of the government. For at least fifteen miles, to Williams's creek, it is, in spots of several

hundred acres, already thickly set with young *live oak*, as well as occasional groves of fine trees; and there are many tracts of five hundred or a thousand acres of low, open, and moist pine woods, and savannas, where the experiment of planting may be made at small expense; for they will neither require enclosing, nor clearing. This point, also, abounds with a very valuable yellow pine, remarkable for the fineness of its grain, and freedom from sap, and which would be valuable for beams and other purposes in ship building.

The first consideration, and that which should precede every other, is the *expenditure*, in the proposed undertaking, and the *advantage*, either *immediately* or *remotely*, to be derived from that expenditure; for although it be a *national* object, to have in store the best materials for the construction of our ships of war, yet that object, important as it is, may be attained at too great an expenditure of the public money. In this situation, I think, however, it will be found not to exceed that which would be fully justified, even considering it only as an *experiment*, but an experiment worthy of an enlightened nation, in a matter of the highest importance, and that consistently with the strictest attention to economy. Great Britain, a century ago, began to find serious difficulty in procuring a sufficient supply of the navy oak, (a kind, I am informed, resembling our post oak,) when those plantations



were suggested, and effected, by a private gentleman, (Evelyn,) consisting of many millions of trees, which at this day, form an ample, and permanent, supply of a very valuable timber. But the navy oak is admitted to be greatly inferior to our *live oak*; a plant, which seems no where else to be found, excepting on our coast; as if to indicate the element on which our countrymen are destined to surpass every other people in enterprise and skill. The practice of forming private plantations, was at that period generally introduced, and at this day constitutes one of the most important items, in estimating the value of landed estate in England. In that country, where the value of every thing is reduced to exact calculation, a person can obtain the present value of his plantation of oaks, formed upon an estimate of their value, some twenty-five or thirty years hence.\* This calculation is made on the prin-

\* The investment of capital for the purpose of *accumulation merely*, is but little known in this country; and in England, it was not much before the reign of queen Ann, that it was well understood. The idea that the capital thus employed remained dead and unavailable, was the reason why people did not choose to invest their money in this way; but since it can be transferred from hand to hand, like other stock, the objection is in a great measure removed. The comparative estimate of the accumulation of money, and that from plantations, may be seen from the following arithmetical criteria:

	Interest.
\$2 at simple interest of 6 per cent. would yield	
at the expiration of twenty-five years,	\$3 00

ciple of annuities, and without going into details, I will assume it as proved, that a tree which will be

Funded in 6 per cent. stock at par, incorporating the half yearly dividends for the same term of twenty-five years, would yield, : - - - 6 76 $\frac{3}{4}$

This is merely the progressive compound interest every six months.

Invested in plantations so as to produce at the expiration of twenty-five years, an aggregate of twenty-five dollars, would be in the following ratio :

Equal to compound interest every six months for twenty-five years, at 17 per cent.

Equal to 6 per cent. bought at par, in a ratio of accumulation of interest every six months, for seventy years.

Equal to one hundred and ninety-one years eight months, of simple interest, at 6 per cent.

#### *Comparative Results.*

Investment, ut supra, - -	\$25 00
By the operation of funding every six months, - - -	\$6 76 $\frac{3}{4}$
Nucleus, or original stock, -	2 00
	<hr/> 8 76 $\frac{3}{4}$ <hr/>

Leaving a result in favour of such investment of

\$16 23 $\frac{1}{4}$

Or nearly 200 per cent. more than by funding, which

worth twenty dollars, at the distance of twenty-five years from this day, ought not to be worth more, at present, than two dollars; that sum then would be the highest price that could be obtained for a plantation already established, and in a flourishing condition. Although considered as a national object, a different estimate might be made, from that which would govern individual transactions, where the interest of money would be the ruling consideration, yet there ought to be some standard by which to estimate the expense, so that the *live oak*, how-

could only be practicable on a scale, when the half yearly dividends would be of a sufficient amount to reinvest, and supposing the stock not to be susceptible of change. Such a state of things, is, however, altogether unknown to what is technically called the monied interest, and is merely stated as a pro-forma hypothesis. Very different is the reality; all stocks are liable to continual fluctuation, and each reinvestment would require the intervention of a broker, or agent, whose commissions would absorb a considerable share of the re-duplication of interest. Of late years, pecuniary capital, from its comparative great abundance, competition in the monied market, and numerous other concurring causes, has been less and less productive. The United States 6 per cent. are now at 102 $\frac{5}{8}$ . From these data, it will readily be conceded that such an investment would exceed the closest operation of funding in a ratio of 225 pr. ct. at the minimum. Upon the system of what are called annuities in fee simple, such an investment would be equivalent to 150 years purchase.

ever important and necessary, should not be obtained at a price greatly exceeding its value. In addition to present cost, an annual allowance should be made, until the tree becomes fit for use, but in the whole, to keep within its value at that period.

Thus, ten thousand trees, at the average value of twenty dollars, (which I do not think out of the way, as the wood is worth a dollar a cubic foot at the navy yard,) fifty years hence, when fit for use, would be worth two hundred thousand dollars, and the present cost ought not to exceed one dollar each, or ten thousand dollars—but this is supposing the *longest time*, before they would be fit for use, and and it is supposing that the price of all kinds of timber, and this especially, will not be greatly enhanced by the alterations in our country, as well as from a greater scarcity. Here then is the maximum of present expenditure, and if that expense exceeds *a dollar a tree*, on the estimate of fifty years, or two dollars, supposing them fit for use in twenty-five, which would amount to twenty dollars—unless it be on a small scale for mere experiment, I would not advise the government to undertake it. But, on the plan which I suggest, it will be seen, that the expense falls far below that amount.

I would endeavour, in the first place, to combine, as far as practicable, immediate advantage with future benefit; *present* and *certain* benefit, with mat-

ter of experiment, however promising. The first thing, therefore, would be to take care of the trees already planted by the hand of nature, and, by proper pains and attention, accelerate and improve their growth. In the next place, to plant trees of the largest size, that will bear transplanting, in situations the most favourable, and where their culture will be attended with the least expense. This point, where I reside, may contain about four thousand acres, and until we reach the open, grassy woods of long-leaved pine, the whole, or nearly the whole, is already thickly set with *live oaks* of every size, and will require no planting; but they are intermixed with short-leaved, or old field pine, with a variety of shrubs, and water-oaks, rendering the whole an impassable jungle. Within this tract, (to which I would recommend that the first operations should be in a great measure confined,) there may be found about *four hundred full grown trees*, fit for any purposes of ship building, and about *four thousand thrifty young trees*, from four to twelve inches in diameter, which, with proper care, may be fit for use in ten or fifteen years. The attention and expense bestowed upon these, cannot be considered as experiment---the benefit would be certain. But the principal operation, and which would not be as certain as the last, although much more so than planting, would be to clear out a given number, say ten thousand young trees, having the advantage of old roots, of two



inches and upwards in diameter. I think the clearing away a few yards round each tree, would suffice to give room and air, and in addition, the opening wide avenues for the latter purpose would be adviseable ; this opinion is derived from observing the effect of the military road, where the young *live oaks* on each side, have doubled the growth of those some distance off. The full grown trees would acquire some little attention also ; I would cut away all the pines, water-oaks and hickories around them, which would produce a large quantity of firewood, that might be cut up afterwards for the supply of the navy yard. I think I would even recommend the cutting down some of those trees which have attained such a size as not to promise much increase ; the timber being cut to mould, and transported to the navy yard, might be preserved in sheds for a hundred years, without any other inconvenience than that of becoming so hard as to break the tools of workmen. I would recommend this plan generally for all the *live oak* on the sound, the Choctaw-hatchy Bay, and other places convenient to the yard ---but this might be done at any time, and is only suggested for this reason, that if the natural stems were cut away, the young sprouts might be nursed into fine trees in a shorter time than by any other mode ; at least, the accumulation of bark and trash about their roots ought to be cleared away. There are some truly noble *live oaks* on this point, which

are well deserving of some attention. As to the plantations, I would be content the first year with setting out a few thousand trees in the open savannas, immediately above the tract of which I have been speaking, and if they will readily take root, these plantations would have many advantages; there would be less trouble in keeping down other growth, there being nothing but grass and scattering pines, and the pine once cut down never sprouts. These first plantations I would at first regard as entirely experimental, and to be made with much care. The proper season and the best mode of transplanting evergreens is not well known; by planting at different times and in different ways they would soon be ascertained. It will be entirely unnecessary to grub or clear the ground, or enclose it, as was done in the small experiment at the navy yard. The wild grass should be cut away a few yards around the plant; the grass is easily killed, and its destruction in the immediate vicinity of the tree, will be a great defence from the fires, the only thing to be much dreaded. I have watched with a good deal of interest the plantations of *live oak* on the public square in Pensacola—but three of the trees have taken root, but these are growing handsomely. I found on inquiry, that the corporation had given a dollar a piece for handsome young trees, ten or twelve feet high, but they were taken up with very little root, planted too deep in the ground, and

were never watered. Those planted at the Cantonment have all taken root, and are flourishing, while those at the navy yard have shared the fate of those at Pensacola.

With ten labourers I would engage to clear out ten thousand of the youngest trees, in the manner I propose, in one year, and plant from one to three thousand, so that five hands would suffice, not only to take care of them during the succeeding years, but to make annual additions of from one thousand to five thousand. But in order to clear and prune the four hundred full grown trees, and the four thousand half grown, it would require the aid of ten additional labourers for one year. My plan of operation, it will be seen, for the first year, is entirely confined to the *four or five thousand acres in this immediate vicinity*, and perhaps a few miles in the open pine woods. In the course of two or three years, after seeing the success of the present undertaking, other subordinate establishments might be made between this and Williams' creek, at two or three of the principal natural groves of *live oak*, where the full grown trees, the half grown and the young ones may be treated in the same way, and adjacent plantations formed. Two or three poor families would be glad to settle at Twitchell's, Allis', and Williams' Hammocks, where there is some land cleared, and they would be useful to keep the fires out of the woods; a very small compensation

would satisfy them, as they could be engaged as labourers. Persons passing and repassing in boats along the Sound, to ascend the Choctawhatchy river, after encamping, leave their fires burning, which communicate with the grassy savannas, and every few years, in very dry weather, and when the leaves have accumulated, it penetrates into the thick woods, doing much injury. A few poor Indian families, also, have made this their hunting ground, but there would be no difficulty in keeping them away.

My estimate of the expense of the first year would be as follows:

For 20 labourers for one year, at \$15 a		
month, 300 working days,	- -	\$4,000
For rations, &c.	- - -	1,000
Cart, oxen, boat and tools,	- -	300
		<hr/>
		\$5,300
Salary of superintendent,	-	700
Overseer,	- - -	500
		<hr/>
		\$6,500

A few hundred dollars would be required in addition, for quarters, store houses, and other temporary buildings. But I would not recommend an expenditure of more than ten thousand dollars at the outside, until the reports and opinions of persons in whom the government place full confidence

shall have given satisfactory assurance of at least fair prospects of success, in the further prosecution of the experiment. If ten labourers only be allowed, it will be recollected that the expense will not be reduced in proportion; the saving would only be in their wages and rations; and I would recommend even continuing the ten labourers the second year, but after that, with occasional assistance, five would suffice. It would probably take several years to make a fair trial, particularly in the transplanted trees. According to my estimate, the present value of the four hundred full grown trees, would be eight thousand dollars, and of the four thousand trees, half grown, at five dollars, twenty thousand dollars; several thousand cords of fire-wood could at the same time be obtained, with a little additional expense. Ten thousand dollars would be money safely expended for national objects like this, so far as they have a *present* or a *certain* value.\*

\* The author was authorized by Mr. Southard, in pursuance of the plan here proposed, to appoint an overseer, and employ twenty hands. This was accordingly done, and the work commenced last February. Two quarterly returns have been made, and much greater progress has been exhibited than was expected; upwards of *forty thousand trees* have been cleared and pruned. They have been classed according to their sizes, in the following manner:

Full grown trees.	Six inches and over.	Between 2 and 6 inches.	Two and under.	Total.
40	977	15,666	5,629	22,312



Some legislation might, perhaps, be necessary to declare the tract of land a reserve for this purpose, and in order to prevent depredations. This point has been a kind of common, for many years, where persons came to cut wood to sell for the use of the town, and for the navy and army. Perhaps a simple notice in the public newspapers, forewarning all such persons, with strict instructions to the District Attorney and the Navy Agent, to prosecute all trespassers, may be found to answer every purpose. A penalty on persons setting fire to the woods would, however, be very useful.

I have thus given a hasty outline of my plan, and

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This is the return of the last quarter. About six miles of avenue, or roads, to protect from fires, have been opened thirty feet wide, and about six or eight acres grubbed and enclosed for the purpose of commencing a nursery from the acorn. It is expected that about sixty thousand trees will be cleared and pruned within the course of the year. The expense will amount to about six thousand dollars, which is much below the estimate. It is hoped that this will be taken as a model for similar plantations in East Florida and Georgia, whence the transportation of the timber will be more easy than from the gulf of Mexico. The government about thirty years ago, purchased some of the islands on the coast of Georgia for the sake of the timber; there is no doubt they could be converted into valuable plantations. I shall feel proud of being instrumental in a work of such vast national importance, as that of securing a permanent supply of the only kind of timber fit for ships of war.

it will afford me great satisfaction to attend to any further suggestions on this interesting subject.

I remain, with sentiments of respect,

Your most obedient servant,

[Signed]

H. M. BRACKENRIDGE.

Hon. SAMUEL L. SOUTHARD,

*Secretary of the Navy United States.*

# REPORT

ADOPTED BY THE CITY COUNCIL

OF BALTIMORE,

*On the Subject of the Defence, &c.\**

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YOUR committee are of opinion, that there are in the affairs of nations, of cities, and communities, certain important era, which naturally call for some commemorative institution. When a people have been rescued from the grasp of despotism, when their condition has been ameliorated by some momentous revolution, or when, through the intervention of a benign Providence, they have escaped some heavy impending calamity, the human mind, in all ages, has sought, as well to record those events with indelible characters on the page of history, as to keep them continually in view by monumental remembrances. The arts of sculpture, architecture, and painting, have been used for the noblest purposes, when thus employed. By their means, the objects

\* This was drawn up by me at the request of one of the committee.

intended to be commemorated, are placed in the most lively and impressive manner, before the eyes of thousands, who may not have the time, or opportunity, to consult the volume of history, while they produce a more deep and lasting impression on the minds of those who are more fortunate. To our youth, they furnish the most solemn lessons, at the same time kindling in their breast, a noble desire to emulate the great examples of their country.

A brief review of that memorable epoch in the history of our city, when all America trembled for her fate, will prove how well it deserves to be placed continually before our eyes. Never can we regard it with indifference, while memory holds her seat, or while we continue to honour the brave citizens, who bled, or died, in the defence of Baltimore.

Our country had been filled with anguish, astonishment and dismay, in consequence of the successful attack on the capital of the nation; we forgot, for a moment, that it was but a straggling village, defended by an inadequate force, hastily drawn together, fatigued and worn down by extraordinary exertions; and the success of the enemy was felt as if a vital blow had been struck at our national existence. It was discovered, that our foes had thrown aside every restraint of civilized warfare, and were ready to commit the most cruel and barbarous outrages. This was unequivocally displayed, in the

wanton destruction of private property, and in the mutilation of the noblest monuments of the arts our infant country had produced. In their hasty retreat from the conflagration at Washington, it was easily seen that Baltimore was their next object of attack. And when the name of that hero and statesman, whose illustrious example is no longer the exclusive right of any portion of the globe, but belongs equally to the whole human race, could not even command a respect for the usages of civilized war, what was to be expected by Baltimore, the peculiar object of their hate, and the most tempting prize to their rapacity?

The return of our fellow citizens from the unsuccessful attempt to defend the unfortunate capital, brought to us the afflicting account which spread a gloomy panic over our city, now thought to be already in the deadly grasp of her unsparing enemy. It is not to be wondered at that the first sensations experienced on this awful occasion, were those of despondency. A powerful fleet and a veteran army, urged on by the prospect of booty, were every moment expected to make their appearance before our city, at that moment in a condition almost defenceless. In this state of the public mind, appalled, as it were, by terrors, from which there appeared no possible escape—our citizens determined on defence: each endeavoured to dispel the feelings of despondency, by the example of his own resolution;



new energy was inspired, and we were taught, that a people contending in defence of their families and their homes, ought never to despair! The period of despondency was not of long duration—it soon yielded to the busy and anxious note of dreadful preparation. Ignoble and coward thoughts vanished from every mind, and each one, with alacrity, took the post assigned him.

Much was to be done, in order to place a large, open town, in a situation to be defended by inexperienced militia. Excepting the fort which defended the entrance to the harbour, this city, which had grown up in an interval of peace, was without a single military work. What an interesting spectacle did she exhibit, in the sudden transition of the employments of her industrious inhabitants, from the avocations of peaceful life, to the turbulent scenes of war! The merchant, the mechanic, the professional man, were seen labouring together in the same trench, moving the same piece of artillery, or exposed to the most inclement weather, and performing the duty of veterans. Such was the scene which Baltimore exhibited, previously to the powerful attack by the forces of Great Britain. We behold a peaceful city, on a sudden, transformed into a martial camp; its population throwing off their civic habits, and feeling all at once the ardour of the patriot soldier of Greece or Rome. We behold friends, and neighbours, brothers, and even

father and son, aged men and boys, with scarcely sufficient strength to wield a fire-arm, mingled in the same company; uniting in the defence of all that is dear to the human heart. Notwithstanding this determined attitude, which Baltimore assumed, the contest was yet regarded as most doubtful; its probable result was indeed against her. Assailed by land and sea, by so powerful a force, to contend with troops flushed with recent victory, under perfect discipline, and impelled by the hope of obtaining a rich booty, with preparations for defence made in so much haste, had she taken a moment to weigh the chances of war, her situation must have appeared desperate indeed. The defence thus resolved upon, under circumstances so discouraging, cannot but heighten the merit of success.

Scarcely had there been time allowed even for these hasty preparations for the reception of the enemy, when, on the 11th of September, 1814, he made his appearance at the mouth of the Patapsco, with a fleet of ships of war, and transports, amounting to fifty sail, besides a greater number of smaller vessels. On the same day, the land forces, to the number of at least seven thousand men, the veterans of Wellington, debarked at North Point, and on the day following advanced towards our city. The Baltimore brigade, composed of citizens of the place, claimed the honour of being the first to meet the invader, and check his insolent march: they

accordingly went forth to give him a foretaste of the manner and spirit with which he might expect to be received. The enemy was unexpectedly met by an advanced party of the brigade, and in a skirmish which ensued, their commander in chief, general Ross, was killed. At first, disconcerted, then exasperated by this signal misfortune, they rushed forward under the orders of their next in command, to revenge the death of their leader. The brigade, although no more than fourteen hundred strong, received with coolness the onset of a force so superior in numbers and discipline; they maintained a brave fight against the formidable invaders, holding their ground until the enemy approached within twenty paces, when they were commanded to retire to the post assigned them, in the general line of defence. Many of our most worthy, and now lamented fellow citizens, on that day offered up their lives, as a sacrifice, on the altar of their country, for the protection of our fire-sides, and to secure to us that safety and prosperity which we now enjoy. Shall these brave men ever be forgotten by us? Shall we prove ourselves ungrateful by neglecting to pay due honours to their memories? Or rather, what honours can our gratitude devise, commensurate with the debt we owe them? ONE HUNDRED AND SIXTY, nearly one-eighth of the force engaged, bled on that occasion! Here was no summer parade of patriotism—the immediate consequences of this battle were

of great importance. It seemed to check the progress of the British army, and to prove to them that a resistance was to be expected very different from that which was represented to their imaginations. Their accounts of the engagement show its importance in their estimation. Our force was magnified by them into an army of six thousand men, and their bulletins vauntingly announced, that "one thousand had been put *hors de combat*." Theirs, according to their own acknowledgment, greatly exceeded ours, and most probably was double the number: so that when we add to this the loss of their commander, they could boast of but a barren triumph. For us, it was followed by all the substantial advantages of a victory; it infused new courage, and confidence, into our citizen soldiers, too much disposed to magnify the prowess of the foe; the adventurous chief was no more; the invincibles of Wellington had been withstood by militia. The effect of this affair, embraced a still more expanded, and expanding circle—and diffused itself over the nation.

The enemy, thus repulsed, deemed it necessary to approach with caution, intrenchments lined with freemen, engaged in the sacred cause of their homes and fire-sides, and soon deemed it prudent to retire to his ships. But our city was simultaneously, and even more seriously, threatened from another quarter. The success of our fellow citizens on the land

side, would have been vain, but for the unexampled defence of fort M'Henry, which protected our city from the hostile fleet. On the 13th of September, 1814, the most eventful day—the day of impending fate to our city, the enemy's ships formed in the shape of a crescent round the fort, and commenced a bombardment, which they continued, with little interruption, during twenty-four hours; throwing upwards of fifteen hundred large shells, weighing each two hundred pounds, besides a vast number of round shot and rockets. The fort was defended by a gallant officer, and manned by citizen-soldiers of Baltimore, in conjunction with a body of sea-fencibles and regulars. Who can forget the throb, which, during that awful night, beat in every anxious bosom? Who can forget the delirium of joy, with which we hailed, on the return of day, the glorious, the beloved flag of our country, still waving, in proud defiance of our assailants? Here too we had conquered—and here too we had to lament the loss of some of our most respectable townsmen, who bravely fell at their posts. The invader, thus baffled in all his attempts, was compelled to retire, and Baltimore once more lifted up her head in gladness---yet in gladness mingled with sorrow.

By this signal and almost unhopd for success, for which let us be thankful to the great source of every good, this city was elevated in the esteem and affection of our common country. The conduct of our city was cited as worthy of imitation, and the



stain upon our arms at Washington was considered wiped away. The event was consoling to our national feelings, and encouraging to our government, at that time seriously embarrassed. It is no more than just to say, that the defence of Baltimore, and the victory of Champlain, were productive of important effects in the result of the war. But why are these facts, still recent in our recollections, thus minutely enumerated? Because the unadorned recital of the story of our preservation—nay, of our second birth, is best calculated to impress on our minds the importance of the event we recommend for perpetual commemoration. When a people become so lost to generous feeling, as to be insensible on such occasions, it is evident they are in a fair way of losing the spirit which produced actions so deserving of praise. In our various pursuits, we are neither wanting in public spirit nor individual enterprise; but is there not something due to those noble feelings of humanity, to those exalted sentiments, which prompt to the achievement of heroic actions? Events of much less moment have given rise to annual festivals and celebrations. It is proposed on this occasion, to illustrate the events of those important days, during which the fate of this city was so critically suspended, by some suitable memorial. For this purpose two paintings are recommended, the one to represent the battle of North Point, where our fellow-citizens first met the enemy, and the other of the defence of fort M<sup>c</sup>Henry,

where an awful bombardment was resisted with success. Your committee is of opinion that subjects of greater sublimity could not offer themselves to the genius of the painter. Where, let us ask, could we find a more touching spectacle than that of a peaceful city, threatened with destruction, by an enemy deemed invincible, and yet in a moment of alarm, little short of panic, and without experience in war, resolving on a desperate defence? We behold a city filled with women, and children, and old men—we behold its defenders, the stay and support in peace of those objects of their affections, as well as their hope in the hour of battle—we behold those objects of affection even less alarmed for their safety, than for that which impends over the heads of their beloved soldiers. Can there be a more sublime spectacle than the appearance of those citizen-soldiers, marching forth from the bosom of their families, to devote themselves in a cause sanctioned by every earthly endearment! The appearance of a regiment moving under the influence of such incentives, must produce a very different effect, from that of the mercenary, who fights because he is paid, or with the ferocity of the tiger for his prey. Surely here is a noble subject for every muse and every art! It is the great example---the lesson of history, addressed to future times, which deserves to be remembered. What is it that constitutes the great and noble in the history of nations and individuals, but these elevated acts of public

and private virtue? The nation has no history--- the individual is confounded with the crowd, where there are no actions worthy to be remembered. The brave defence of Baltimore, will, doubtless, be recorded in history with all the honour it so richly deserves; but, as a community, it is our duty to mark the event in a more distinct and peculiar manner. What Baltimorean---what American will not feel a generous glow of exultation, when he beholds these monumental testimonials of the valour and patriotism of his countrymen! Nothing contributed so much in the bright days of Greece and Rome, to keep alive patriotic feeling and public spirit, as the national monuments erected in honour of great actions and meritorious individuals. Our republic is but just beginning to acquire a character and a name; but this can only be rendered deserving of esteem and admiration by a series of noble actions on the part of her sons; these should, therefore, be carefully monumented. The day will come, when full employment will be afforded to our artists, our orators, and our writers, in illustrating and embellishing our national achievements both in war and peace. It is due then to our country, to this city, to the brave men who fought, to the living and the dead, and to our children, who may be called upon at some future day to emulate the example, that some suitable measure be adopted to commemorate and mark these events, so highly interesting to the city of Baltimore and the American people.









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